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March 14, 2011

Ms. Gwendolyn Keyes Fleming
Regional Administrator
United States Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Re: Revisions to the South Carolina *Air Quality Implementation Plan* – Prevention of Significant Deterioration and Nonattainment New Source Review

Dear Ms. Fleming:

The South Carolina Department of Health and Environmental Control (“Department”) is requesting that the U.S. Environmental Protection Agency (“EPA”) grant final approval of revisions to the Prevention of Significant Deterioration (“PSD”) and Nonattainment New Source Review (“NSR”) provisions of the South Carolina *Air Quality Implementation Plan* (“SIP”). The Department requested parallel processing for this revision on December 2, 2010. Under the parallel processing procedure, the EPA Regional office works closely with the state during the development of new or revised regulations and solicits public comment in approximately the same time frame that the state notices its proposed revisions and holds its public hearing.

Background

On November 29, 2005, the EPA issued a final rule in the *Federal Register* entitled *Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard* (70 FR 71612), also known as the “Phase 2 Ozone Rule,” which finalized regulations to implement the 8-hour ground-level ozone National Ambient Air Quality Standard that the EPA established in July 1997. The Department has implemented all required elements of this rule, but is clarifying a footnote to the PSD regulations to list nitrogen oxide (“NO_x”) as a precursor to ozone in this SIP revision.

On April 25, 2008, the Department published a Notice of Drafting in the *South Carolina State Register* to initiate revisions to Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review (NSR)*, and the SIP, in order to comply with a final rule entitled *Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements* (72 FR 32526), published in the *Federal Register* on June 13, 2007.

On May 16, 2008, the EPA published a final rule in the *Federal Register* entitled *Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})* (73 FR

28321), also known as the “NSR PM_{2.5} Implementation Rule,” which finalized regulations to implement the NSR program for fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as “PM_{2.5}”). The NSR PM_{2.5} Implementation Rule became effective July 15, 2008, and required states with SIP-approved PSD programs, of which South Carolina is one, to submit revised PSD programs within a 3 year transition period following the date of its publication (May 16, 2011). The NSR PM_{2.5} Implementation Rule included a major source threshold, significant emissions rates for direct PM_{2.5} and its presumed precursors, sulfur dioxide (SO₂) and NO_x; offset ratios for PM_{2.5}; and interpollutant trading for offsets and applicability of NSR to PM_{2.5} precursors. The NSR PM_{2.5} Implementation Rule also continued the EPA’s policy of allowing SIP-approved states to use PM₁₀ (that is, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) as a surrogate for PM_{2.5} in meeting the NSR requirements of the Clean Air Act, until the end of the 3 year transition period (“EPA PM₁₀ Surrogate Policy”).

On September 26, 2008, the Department published a second Notice of Drafting in the *South Carolina State Register* for the revisions to Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review (NSR)*, and the SIP. This second notice incorporated, among other things, the NSR PM_{2.5} Implementation Rule.

On April 24, 2009, the Department published a Notice of Final Regulation in the *South Carolina State Register* to complete the regulation development process initiated by the aforementioned Notices, except for the revisions required to incorporate the NSR PM_{2.5} Implementation Rule. The Department elected to delay these revisions for the NSR PM_{2.5} Implementation Rule, pending further guidance from the EPA, which the EPA released in part on September 29, 2010.

Current Revisions

On July 23, 2010, the Department published a Notice of Drafting (included as part of Appendix A) in the *South Carolina State Register* to incorporate the NSR PM_{2.5} Implementation Rule and the clarification from the Phase 2 Ozone Rule. On August 16, 2010, EPA Region 4 advised the Department not to include the interpollutant trading ratio amendments in the NSR PM_{2.5} Implementation Rule in this SIP revision, pending the resolution of litigation. The Department has not included interpollutant trading ratios in this SIP amendment.

On October 1, 2010, per a request from the EPA, the Department submitted its initial prehearing SIP package to the EPA for review and comment. On October 8, 2010, the Department received recommendations from the EPA based on the October 1, 2010, submittal. The Department addressed these recommendations in an October 20, 2010, revised prehearing SIP package.

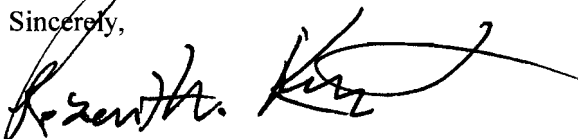
On November 26, 2010, the Department published a Notice of Proposed Regulation (included as part of Appendix B) seeking public comment on the current revisions to the SIP in the *South Carolina State Register*. On December 17, 2010, the EPA notified the Department that it had reviewed the October 20, 2010, submittal, and that it had no comments. On December 29, 2010, the Department held a staff informational forum (“SIF”). No stakeholders attended, and the Department received no comments during the comment period. A transcript of the SIF and copy of the SIF Sign-in Sheet are included as part of Appendix A.

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The Department held a public hearing before the Board of Health and Environmental Control on February 10, 2011, at which the Department received no comments. A transcript of this meeting is included as part of Appendix B. On February 25, 2011, the Department published a Notice of Final Regulation (included as part of Appendix B) in the *South Carolina State Register* to revise Regulation 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, Regulation 61-62.5, Standard No. 7.1, *Nonattainment New Source Review (NSR)*, and the SIP.

The Department appreciates the assistance provided by EPA Region 4 during the formulation of this plan. Should you or your staff have any questions or comments concerning this SIP revision, please contact Alan Hancock of the Bureau of Air Quality by email at hancocam@dhec.sc.gov or by telephone at (803) 898-4139.

Sincerely,



Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

ec: Richard Schutt, Chief, Air Planning Branch, EPA Region 4
Lynorae Benjamin, Chief, Regulatory Development Section, EPA Region 4
Royce Dansby-Sparks, Regulatory Development Section, EPA Region 4
Twunjala Bradley, Regulatory Development Section, EPA Region 4
Joel Huey, Regulatory Development Section, EPA Region 4
Myra Reece, Bureau Chief, BAQ, S.C. DHEC
Renee Shealy, Assistant Bureau Chief, BAQ, S.C. DHEC
Robert Brown, Director, Division of Air Assessment, Innovations, and Regulation, BAQ,
S.C. DHEC
Maeve S. R. Mason, Manager, Regulation & SIP Management Section, BAQ,
S.C. DHEC

CD enclosure:

1. Text of Final Regulation (strikeout and clean copy)
2. Appendix A: Notice of Drafting, Notice of Proposed Regulation, Staff-Led Informational Forum Sign-in Sheet and Transcript
3. Appendix B: Board Public Hearing Transcript and Notice of Final Regulation
4. Appendix C: Copy of Legal Authority

Text of Final Regulation Strikeout Version and Clean Copy

Strikeout/Highlight Version, R. 61-62.5, Standard No. 73
Strikeout/Highlight Version, R. 61-62.5, Standard No. 7.148
Clean Copy, R. 61-62.5, Standard No. 778
Clean Copy, R. 61-62.5, Standard No. 7.1123

Strikeout/Highlight Version, R. 61-62.5, Standard No. 7

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

**REGULATION 61-62.5
AIR POLLUTION CONTROL STANDARDS**

**STANDARD NO. 7
PREVENTION OF SIGNIFICANT DETERIORATION**

(a)(1) Reserved.

(2) Applicability procedures.

(i) The requirements of this regulation apply to the construction of any new major stationary source (as defined in paragraph (b)(32)) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under 40 CFR 81.341.

(ii) The requirements of paragraphs (j) through (r) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(a) through (f).

(a) Except as otherwise provided in paragraphs (a)(2)(v) and (vi), and consistent with the definition of major modification contained in paragraph (b)(30), a project is a major modification for a regulated New Source Review (NSR) pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (b)(50)), and a significant net emissions increase (as defined in paragraphs (b)(34) and (b)(49)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(c) through (f). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (b)(34). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(41)) and the baseline actual

emissions (as defined in paragraphs (b)(4)(i) and (ii)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(49)).

(d) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(37)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b)(4)(iii)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(49)).

(e) **[Reserved]**

(f) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) and (d) as applicable with respect to each emissions unit, equals or exceeds, the significant amount for that pollutant (as defined in paragraph (b)(49)).

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

(b) Definitions.

For the purposes of this regulation:

(1)(i) **“Actual emissions”** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(1)(ii) through (iv), except that this definitions shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (aa). Instead, paragraphs (b)(41) and (b)(4) shall apply for those purposes.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

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

(3) **“Allowable emissions”** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the

operating rate, or hours of operation, or both) and the most stringent of the following:

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

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

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

(4) **“Baseline actual emissions”** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (b)(4)(i) through (iv).

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

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

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (b)(4)(i)(b).

(ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this section or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the 24-month period selected is appropriate.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

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

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an

emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (b)(4)(ii)(b) and (c).

(iii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(4)(i), for other existing emissions units in accordance with the procedures contained in paragraph (b)(4)(ii), and for a new emissions unit in accordance with the procedures contained in paragraph (b)(4)(iii).

(5)(i) **“Baseline area”** means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(ii) Area redesignations under section 107(d)(1)(D) or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 51.166 and would be constructed in the same state as the state proposing the redesignation.

(iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with paragraph (b)(31)(iv).

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

(a) The actual emissions, as defined in paragraph (b)(1), representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) (6)(ii); and

(b) The allowable emissions of major stationary sources that commenced construction before the

major source baseline date, but were not in operation by the applicable minor source baseline date.

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

(a) Actual emissions, as defined in paragraph (b)(1), from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases, as defined in paragraph (b)(1), at any stationary source occurring after the minor source baseline date.

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

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

(9) **“Building, structure, facility, or installation”** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(10) **“Clean coal technology”** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) **“Clean coal technology demonstration project”** means a project using funds appropriated under the heading “Department of Energy-Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(12) **[Reserved]**

(13) **“Commence”** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

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

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

(14) **“Complete”** means in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

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

(16) **“Continuous emissions monitoring system (CEMS)”** means all of the equipment that may be required to meet the data acquisition and availability requirements of this regulation, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(17) **“Continuous emissions rate monitoring system (CERMS)”** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(18) **“Continuous parameter monitoring system (CPMS)”** means all of the equipment necessary to meet the data acquisition and availability requirements of this regulation, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(19) **“Electric utility steam generating unit”** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) **“Emissions unit”** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (b)(19). For purposes of this regulation, there are two types of emissions units as described in paragraphs (b)(20)(i) and (ii).

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

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(20)(i). A replacement unit, as defined in paragraph (b)(45), is an existing emissions unit.

(21) **“Federal Land Manager”** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(22) **“Federally enforceable”** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(23) **“Fugitive emissions”** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(24) **“High terrain”** means any area having an elevation 900 feet or more above the base of the stack of a source.

(25) **“Indian Governing Body”** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self government.

(26) **“Indian Reservation”** means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

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

(28) **“Low terrain”** means any area other than high terrain.

(29) **“Lowest achievable emission rate (LAER)”** is as defined in paragraph (c)(5) of Regulation 61-62.5 Standard 7.1, *“Nonattainment New Source Review.”*

(30)(i) **“Major modification”** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(50)) of a regulated NSR pollutant (as defined in paragraph (b)(44)); and a significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined in paragraph (b)(50)) from any emissions units or net emissions increase (as defined in paragraph (b)(34)) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

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

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act;

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

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

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.

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

(h) [Reserved]

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State implementation plan for the State in which the project is located, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

(iv) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (aa) for a PAL for that pollutant. Instead, the definition at paragraph (aa)(2)(viii) shall apply.

(31)(i) **“Major source baseline date”** means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

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

(ii) **“Minor source baseline date”** means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

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

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Federal Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21; and

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

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Department shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

(32)(i) **“Major stationary source”** means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (b)(32)(i), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(32), as a major stationary source, if the changes would constitute a major stationary source by itself.

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

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

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

- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat

input, and

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(33) “**Necessary preconstruction approvals or permits**” means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(34)(i) “**Net emissions increase**” means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) The increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv); and

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (b)(34)(i)(b) shall be determined as provided in paragraph (b)(4), except that paragraphs (b)(4)(i)(c) and (b)(4)(ii)(d) shall not apply.

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

(a) The date five years before construction on the particular change commences; and

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

(iii) An increase or decrease in actual emissions is creditable only if:

(a) The Department has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(b) [Reserved]

(c) It occurs within five years before the date that the increase from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide, that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available

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

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

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

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

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

(vii) [Reserved]

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

(ix) Paragraph (b)(1)(ii) shall not apply for determining creditable increases and decreases.

(35) [Reserved]

(36) [Reserved]

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

(38) **“Predictive emissions monitoring system (PEMS)”** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(39) **“Prevention of Significant Deterioration (PSD) program”** means the EPA-implemented major source preconstruction permit programs or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

(40) **“Project”** means a physical change in, or change in the method of operation of, an existing major stationary source.

(41)(i) **“Projected actual emissions”** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions under paragraph (b)(41)(i) (before beginning actual construction), the owner or operator of the major stationary source:

(a) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

(b) Shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns; and

(c) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (b)(4) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(d) In lieu of using the method set out in paragraph (b)(41)(ii)(a) through (c), may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(37).

(42) **“Reactivation of a very clean coal-fired electric utility steam generating unit”** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

(43) **“Reasonably available control technology (RACT)”** is as defined in 40 CFR 51.100(o).

(44) **“Regulated NSR pollutant,”** for purposes of this regulation, means the following:

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (~~e.g., volatile organic compounds are precursors for ozone~~); **Precursors identified by the Administrator for purposes of NSR are the following:**

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(b) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(d) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or the EPA demonstrates

that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Clean Air Act;

(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Clean Air Act; or

(iv) Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in section 112 of the Clean Air Act or added to the list pursuant to section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Clean Air Act.

(v) Reserved

(vi) Particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in PSD permits. Compliance with emissions limitations for PM, PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

(45) **“Replacement unit”** means an emissions unit for which all the criteria listed in paragraphs (b)(45)(i) through (iv) are met. No credible emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(i) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(46)(i) **“Repowering”** means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal

technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(47) **Reserved**

(48) **“Secondary emissions”** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, from a vessel; or from the following:

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

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

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

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter:

25 tpy of particulate matter emissions;

15 tpy of PM₁₀ emissions

10 tpy of direct PM_{2.5};

40 tpy of sulfur dioxide emissions;

40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under (b)44 of this section

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H₂S): 10 tpy

Total reduced sulfur (including H₂S): 10 tpy

Reduced sulfur compounds (including H₂S): 10 tpy

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

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

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

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

(ii) “**Significant**” means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (b)(49)(i), does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(49)(i), significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m³, (24-hour average).

(50) “**Significant emissions increase**” means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(49)) for that pollutant.

(51) “**Stationary source**” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(52) “**Temporary clean coal technology demonstration project**” means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(53) “**Volatile organic compounds (VOC)**” is as defined in Regulation 61-62.1, Section I, *Definitions*.

(c) Ambient air increments.

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

CLASS I		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	4
	PM ₁₀ , 24-hr maximum	8
Sulfur dioxide:	annual arithmetic mean	2
	24-hr maximum	5

CLASS I		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
	3-hr maximum	25
Nitrogen dioxide:	annual arithmetic mean	2.5

CLASS II		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	17
	PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	512
Nitrogen dioxide:	annual arithmetic mean	25

CLASS III		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	34
	PM ₁₀ , 24-hr maximum	60
Sulfur dioxide:	annual arithmetic mean	40
	24-hr maximum	182
	3-hr maximum	700
Nitrogen dioxide:	annual arithmetic mean	50

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

(d) Ambient air ceilings.

No concentration of a pollutant shall exceed:

- (1) The concentration permitted under the national secondary ambient air quality standard, or
- (2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

(e) Restrictions on area classifications.

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

- (i) International parks,
- (ii) National wilderness areas which exceed 5,000 acres in size,
- (iii) National memorial parks which exceed 5,000 acres in size, and

(iv) National parks which exceed 6,000 acres in size.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

(3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.

(4) The following areas may be redesignated only as Class I or II:

(i) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(f) [Reserved]

(g) Redesignation.

(1) All areas (except as otherwise provided under paragraph (e)) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph (e)) may be proposed by the respective States or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State implementation plan.

(2) The State may submit to the Administrator a proposal to redesignate areas of the State Class I or Class II provided that:

(i) At least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

(ii) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(iii) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(iv) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(v) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which paragraph (e) refers may be redesignated as Class III if –

(i) The redesignation would meet the requirements of paragraph (g)(2);

(ii) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation:

(iii) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(iv) Any permit application for any major stationary source or major modification, subject to review under paragraph (l), which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Department a proposal to redesignate areas Class I, Class II, or Class III: Provided, That:

(i) The Indian Governing Body has followed procedures equivalent to those required of a State under paragraphs (g)(2), (g)(3)(iii), and (g)(3)(iv); and

(ii) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if it is found, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph (e). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the Administrator disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

(h) Stack heights.

(1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by--

(i) So much of the stack height of any source as exceeds good engineering practice, or

(ii) Any other dispersion technique.

(2) Paragraph (h)(1) shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

(i) Exemptions

(1) The requirements of paragraphs (j) through (r) shall not apply to a particular major stationary source or major modification, if:

(i) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(ii) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

(a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

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

(iii) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(iv) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

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

(v) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

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

(vi) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the state in which the source or

modification would be located requests that it be exempt from those requirements; or

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

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act; or
- (viii) The source is a portable stationary source which has previously received a permit under this section, and
 - (a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and
 - (b) The emissions from the source would not exceed its allowable emissions; and
 - (c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
 - (d) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Department.
- (ix) The source or modification was not subject to section 52.21 with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:
 - (a) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;
 - (b) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and
 - (c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.
- (x) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Department subsequently determines that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of paragraphs (j) through (r) that were in effect before July 31, 1987 shall apply to such source or modification.
- (2) The requirements of paragraphs (j) through (r) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Clean Air Act.

(3) The requirements of paragraphs (k), (m) and (o) shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

- (i) Would impact no Class I area and no area where an applicable increment is known to be violated, and
- (ii) Would be temporary.

(4) The requirements of paragraphs (k), (m) and (o) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

(5) The Department may exempt a stationary source or modification from the requirements of paragraph (m), with respect to monitoring for a particular pollutant if:

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

- Carbon monoxide--575 $\mu\text{g}/\text{m}^3$, 8-hour average;
- Nitrogen dioxide--14 $\mu\text{g}/\text{m}^3$, annual average;
- Particulate matter--10 $\mu\text{g}/\text{m}^3$ of PM_{10} , 24-hour average;
- Sulfur dioxide--13 $\mu\text{g}/\text{m}^3$, 24-hour average;
- Ozone;¹
- Lead--0.1 $\mu\text{g}/\text{m}^3$, 3-month average;
- Fluorides--0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;
- Total reduced sulfur--10 $\mu\text{g}/\text{m}^3$, 1-hour average;
- Hydrogen sulfide--0.2 $\mu\text{g}/\text{m}^3$, 1-hour average;
- Reduced sulfur compounds--10 $\mu\text{g}/\text{m}^3$, 1-hour average; or

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

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(85)(i), or the pollutant is not listed in paragraph (i)(85)(i).

(6) The requirements for best available control technology in paragraph (j) and the requirements for air quality analyses in paragraph (m)(1), shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Department subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(7)(i) The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date was complete with respect to the requirements of this regulation other than those in paragraphs (m)(1)(ii)

through (iv), and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(ii) The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1)(ii) through (iv).

(8)(i) At the discretion of the Department, the requirements for air quality monitoring of PM₁₀ in paragraphs (m)(1)(i)--(iv) may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i) through (iv).

(ii) The requirements for air quality monitoring of PM₁₀ in paragraphs (m)(1), (ii) and (iv) and (m)(3) shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii), except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over a shorter period.

(9) The requirements of paragraph (k)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Department subsequently determined that the application as submitted before that date was complete.

(10) The requirements in paragraph (k)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM₁₀ if

(i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM₁₀ took effect in an implementation plan to which this section applies, and

(ii) the Department subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(2) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

(j) Control technology review.

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

(2) A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each regulated NSR pollutant for

which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

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

(k) Source impact analysis.

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

- (1) Any national ambient air quality standard in any air quality control region; or
- (2) Any applicable maximum allowable increase over the baseline concentration in any area.

(l) Air Quality Models

(1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in 40 CFR 51 appendix W (Guideline on Air Quality Models).

(2) Where an air quality model specified in 40 CFR 51 appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Department must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q).

(m) Air quality analysis--

(1) Preapplication analysis.

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

- (a) For the source, each pollutant that it would have the potential to emit in a significant amount;
- (b) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard

does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

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

(v) For any application which becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv), between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii), requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

(a) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(b) If the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii), requires shall have been gathered over at least that shorter period.

(c) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Department may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(vi) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1).

(vii) For any application that becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv) pertaining to PM₁₀, after December 1, 1988 and no later than August 1, 1989 the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

(viii) With respect to any requirements for air quality monitoring of PM₁₀ under paragraphs (i)(11)(i) and (ii) the owner or operator of the source or modification shall use a monitoring method approved by the Department and shall estimate the ambient concentrations of PM₁₀ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Department.

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

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58 of during the operation of monitoring

stations for purposes of satisfying paragraph (m).

(n) Source information.

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

(1) With respect to a source or modification to which paragraphs (j), (l), (n) and (p) apply, such information shall include:

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

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

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

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

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

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

(o) Additional impact analyses.

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

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

(3) Visibility monitoring. The Department may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(p) Sources impacting Federal Class I areas--additional requirements--

(1) Notice to Federal land managers. The Department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed

source's anticipated impacts on visibility in the Federal Class I area. The Department shall also provide the Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q), and shall make available to them any materials used in making that determination, promptly after the Department makes such determination. Finally, the Department shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) Federal Land Manager. The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Department, whether a proposed source or modification will have an adverse impact on such values.

(3) Visibility analysis. The Department shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1), that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Department finds that such an analysis does not demonstrate to the satisfaction of the Department that an adverse impact on visibility will result in the Federal Class I area, the Department must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

(4) Denial--impact on air quality related values. The Federal Land Manager of any such lands may demonstrate to the Department that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Department concurs with such demonstration, then the permit shall not be issued.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies, the State may authorize the Administrator: Provided, That the applicable requirements of this regulation are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	17
	PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	325
Nitrogen dioxide:	annual arithmetic mean	25

(6) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under paragraph (q)(4) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any Class I area and, in the case of Federal

mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Department shall issue a permit to such source or modification pursuant to the requirements of paragraph (q)(7): Provided, that the applicable requirements of this regulation are otherwise met.

(7) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if it is found that the variance is in the national interest. If the variance is approved, the Department shall issue a permit pursuant to the requirements of paragraph (q)(7): Provided, that the applicable requirements of this regulation are otherwise met.

(8) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued pursuant to paragraph (q)(5) or (6) the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE (Micrograms per cubic meter)		
Period of exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(q) Public participation.

(1) Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(2) In accordance with Regulation 61-30, *Environmental Protection Fees*, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

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

(ii) Make available in at least one location in each region in which the proposed plant 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.

(iii) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed plant or modification would be constructed, of the application, the preliminary determination, the

degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as written public comment.

(iv) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the plant 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 plant or modification.

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

(vi) 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 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed plant or modification.

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

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

(ix) Notify EPA of every action related to the consideration of the permit.

(3) The requirements of Section (q), Public Participation, of this standard shall not apply to any major plant or major modification which Section (i), Review of Major Stationary Sources and Major Modifications, would exempt from the requirements of Sections (k), (m), and (o), but only to the extent that, with respect to each of the criteria for construction approval under the South Carolina State Implementation Plan and for exemption under Section (i), requirements providing the public with at least as much participation in each material determination as those of Section (q) have been met in the granting of such construction approval.

(r) Source obligation. In addition to all other applicable requirements specified in this regulation, the owner or operator shall comply with the requirements of paragraphs (r)(1) through (r)(8).

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence

construction within 18 months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

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

(5) Reserved

(6) **Monitoring, recordkeeping and reporting.** The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) If the project requires construction permitting under Regulation 61-62.1, Section II "Permit Requirements", the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(ii) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II "Permit Requirements" is not required, the owner or operator shall maintain the information set out in paragraph (r)(6)(ii).

(ii) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) A description of the project;

(b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(ii)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(ii), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(ii)(c)), by a significant amount (as defined in paragraph (b)(49)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(ii)(c). Such report shall be submitted to the Department within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii); and

(c) Any other information needed to make a compliance determination (*e.g.*, an explanation as to why the emissions differ from the preconstruction projection).

(7) If a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements", the owner or operator shall provide notification of source status as part of the permit application to the Department.

(8) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (r)(6) available for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(s) through (u)(3) - Reserved.

(u)(4) In the case of a source or modification which proposes to construct in a class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a class II area, and where no standard under section 111 of the act has been promulgated for such source category, the Administrator must approve the determination of best available control technology as set forth in the permit.

(v) Innovative control technology.

(1) An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Department shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:--

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

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2), by a date specified by the Department. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements of paragraphs (j) and (k), based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Department;

(iv) The source or modification would not before the date specified by the Department:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; or

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

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

(vi) The provisions of paragraph (p) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

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

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

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

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

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (v)(3), the Department may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(w) Permit rescission.

(1) Any permit issued under this section or a prior version of this regulation shall remain in effect, unless and until it expires under paragraph (s) or is rescinded.

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this regulation, may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Department shall grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Department rescinds a permit under this paragraph, 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 60 days of the rescission shall be considered adequate notice.

(x) [Reserved]

(y) [Reserved]

(z) [Reserved]

(aa) Actuals PALs. The provisions in paragraphs (aa)(1) through (15) govern actuals PALs.

(1) Applicability.

(i) The Department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in paragraphs (aa)(1) through (15). The term "PAL" shall mean "actuals PAL" throughout paragraph (aa).

(ii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (aa)(1) through (15), and complies with the PAL permit:

(a) Is not a major modification for the PAL pollutant;

(b) Does not have to be approved through Regulation 61-62.5, Standard 7, *Prevention of Significant Deterioration*. However, will be reviewed through R. 61-62.1, Section II A. *Permit Requirements*; and

(c) Is not subject to the provisions in paragraph (r)(4) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

(iii) Except as provided under paragraph (aa)(1)(ii)(c), a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Definitions. The definitions in paragraphs (aa)(2)(i) through (xi) shall apply to actual PALs consistent with paragraphs (aa)(1) through (15). When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) or in the Clean Air Act.

(i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(4)) of all emissions units (as defined in paragraph (b)(20)) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) **"Allowable emissions"** means "allowable emissions" as defined in paragraph (b)(3), except as this definition is modified according to paragraphs (aa)(2)(ii)(a) and (b).

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(37), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) **"Small emissions unit"** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(49) or in the Clean Air Act, whichever is lower.

(iv) **"Major emissions unit"** means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for

nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) **“Plantwide applicability limitation (PAL)”** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15).

(vi) **“PAL effective date”** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) **“PAL effective period”** means the period beginning with the PAL effective date and ending 10 years later.

(viii) **“PAL major modification”** means, notwithstanding paragraphs (b)(30) and (b)(34) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) **“PAL permit”** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1, Section II G, or the title V permit issued by the Department that establishes a PAL for a major stationary source.

(x) **“PAL pollutant”** means the pollutant for which a PAL is established at a major stationary source.

(xi) **“Significant emissions unit”** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(49) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv).

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

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

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

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

(4) General requirements for establishing PALs.

(i) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(a) through (g) are met.

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

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (aa)(5).

(c) The PAL permit shall contain all the requirements of paragraph (aa)(7).

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with section (q) “Public Participation” of this regulation. The Department must address all material comments before taking final action on the permit.

(6) Setting the 10-year actuals PAL level.

(i) Except as provided in paragraph (aa)(6)(ii), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(4)) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(49) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Department is aware of prior to the issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the

permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) Emissions from units (which do not include modification to existing units) on which operation began less than 24-months prior to the date of the PAL permit application must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (x).

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(iv) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (aa)(9).

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

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12).

(viii) A requirement to retain the records required under paragraph (aa)(13) on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (aa)(14) by the required deadlines.

(x) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The requirements in paragraphs (aa)(8)(i) and (ii) apply to actuals PALs.

(i) **PAL effective period.** The Department shall specify a PAL effective period of 10 years.

(ii) **Reopening of the PAL permit.**

(a) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (aa)(11).

(b) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(c) Except for the permit reopening in paragraph (aa)(8)(ii)(a)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (aa)(5).

(9) Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in paragraph (aa)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (aa)(9)(i) through (v) shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (aa)(9)(i)(a) and (b).

(a) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v), such distribution shall be made as if the PAL had been adjusted.

(b) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (aa)(9)(i)(b), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(30).

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (r)(4), but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(c).

(10) **Renewal of a PAL.**

(i) The Department shall follow the procedures specified in paragraph (aa)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(ii) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs (aa)(10)(iii)(a) through (d).

(a) The information required in paragraphs (aa)(3)(i) through (iii).

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(iv) **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (aa)(10)(iv)(a) and (b). However, in no case may any such adjustment fail to comply with paragraph (aa)(10)(iv)(c).

(a) If the emissions level calculated in accordance with paragraph (aa)(6) is equal to or greater than 80 percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (aa)(10)(iv)(b); or

(b) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(c) Notwithstanding paragraphs (aa)(10)(iv)(a) and (b):

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (aa)(11) (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

(i) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (aa)(11)(i)(a) through (d).

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

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

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

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

(ii) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (aa)(11)(i)(b)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (aa)(5).

(12) Monitoring requirements for PALs. (i) General requirements. (a) Each PAL permit must contain

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

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

(c) Notwithstanding paragraph (aa)(12)(i)(b), the owner or operator may also employ an alternative monitoring approach that meets paragraph (aa)(12)(i)(a) if approved by the Department.

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

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

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) Emission factors.

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

(a) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (aa)(12)(iii) through (vii), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(a) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) Recordkeeping requirements. (i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (aa) and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(a) A copy of the PAL permit application and any applications for revisions to the PAL; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) **Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (aa)(14)(i) through (iii).

(i) **Semi-annual report.** The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (aa)(14)(i)(a) through (g).

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i).

(c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (aa)(12)(vii).

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) **Deviation report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The PAL requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) **Re-validation results.** The owner or operator shall submit to the Department the results of any re-validation test or method within 3 months after completion of such test or method.

(15) Transition requirements.

(i) The Department may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) after the date these provisions become effective.

(ii) The Department may supersede any PAL that was established prior to the date these provisions become effective with a PAL that complies with the requirements of paragraphs (aa)(1) through (15).

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

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**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

**REGULATION 61-62.5
AIR POLLUTION CONTROL STANDARDS**

**STANDARD NO. 7.1
NONATTAINMENT NEW SOURCE REVIEW (NSR)**

(a) Applicability

(1) This rule applies to all major stationary sources constructed or modified in any nonattainment area as designated in 40 CFR 81.341 ("nonattainment area") if the emissions from such facility will cause or contribute to concentrations of a regulated NSR pollutant (as defined in paragraph (c)(13)) for which the nonattainment area was designated as nonattainment. Applicability to this regulation shall be based on the pollutant emission rate set out in paragraph (c)(14) for only those pollutants for which the area's designation is based.

(A) The requirements of paragraph (d) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as provided in paragraph (b).

(B) No new major stationary source or major modification to which the requirements of paragraph (d) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(2) **Redesignation to attainment.** If any nonattainment area to which this regulation applies is later designated in 40 CFR 81.341 as attainment, all sources in that nonattainment area subject to this regulation before the redesignation date shall continue to comply with this regulation.

(3) For any area designated as nonattainment a major stationary source or major modification that is major for volatile organic compounds or oxides of nitrogen is also major for ozone.

(b) Applicability procedures.

(1) Except as otherwise provided in paragraphs (b)(7) and (8), and consistent with the definition of major modification contained in paragraph (c)(6)(A), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (c)(15), and a significant net emissions increase (as defined in paragraphs (c)(8) and (15)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (b)(1) through (6). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (c)(8). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (c)(11)) and the baseline actual emissions (as defined in paragraphs (c)(2)(A) and (B), as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(37) of Regulation 61-62.5 Standard 7, “*Prevention of Significant Deterioration*” (“Standard 7”)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (c)(2)(C)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(5) [Reserved]

(6) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (b)(3) and (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(7) For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (i).

(c) **Definitions.** The following definitions apply to this Standard only. Any other term contained within this Standard is as defined where indicated in Regulation 61-62.5, Standard 7, “*Prevention of Significant Deterioration.*”

(1)(A) **“Actual emissions”** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (c)(1)(B) through (D), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (i). Instead, paragraphs (c)(2) and (c)(11) shall apply for those purposes.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **“Baseline actual emissions”** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (c)(2)(A) through (D).

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns.

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

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (c)(2)(A)(ii).

(B) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required either under this section or under a plan approved by the Administrator whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the 24-month period selected is appropriate.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

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

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph (d)(1)(c)(viii).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (c)(2)(B)(ii) and (iii).

(C) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(D) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (c)(2)(A), for other existing emissions units in accordance with the procedures contained in paragraph (c)(2)(B), and for a new emissions unit in accordance with the procedures contained in paragraph (c)(2)(C).

(3) “**Best available control technology (BACT)**” means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 or 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of 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.

(4) [Reserved]

(5) “**Lowest achievable emission rate (LAER)**” means, for any source, the more stringent rate of emissions based on the following:

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

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(6)(A) “**Major modification**” means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph (c)(13)); and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(B) Any significant emissions increase (as defined in paragraph (c)(15)) from any emissions units or net emissions increase (as defined in paragraph (c)(8)) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(C) 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 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Clean Air Act;

(iv) Use of an alternative fuel at a steam 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;

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, or

(b) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976.

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

(viii) [Reserved]

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The South Carolina State Implementation Plan, and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

(D) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (i) for a PAL for that pollutant. Instead, the definition at paragraph (i)(2)(viii) shall apply.

(7)(A) **“Major stationary source”** means:

(i) Any stationary source of air pollutants which emits, or has the potential to emit 100 tons per year or more of any regulated NSR pollutant, or

(ii) Any physical change that would occur at a stationary source not qualifying under paragraph (c)(7)(A)(i) as a major stationary source, if the change would constitute a major stationary source by itself.

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

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

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;

(xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(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; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

(8)(A) **“Net emissions increase”** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (b); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (c)(8)(A)(ii) shall be determined as provided in paragraph (c)(2), except that paragraphs (c)(2)(A)(iii) and (c)(2)(B)(iv) shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(i) It occurs within five years before construction on the particular change commences; and

(ii) The Department has not relied on it in issuing a permit for the source, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

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

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

(iii) The Department has not relied on it in issuing any permit or the Department has not relied on it in demonstrating attainment or reasonable further progress;

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

(F) 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.

(G) Paragraph (c)(1)(B) shall not apply for determining creditable increases and decreases or after a change.

(9) **“Nonattainment major new source review (NSR) program”** means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this regulation, or a program that implements 40 CFR 51, appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.

(10) **[Reserved]**

(11)(A) **“Projected actual emissions”** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (c)(11)(A) before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (c)(2) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) In lieu of using the method set out in paragraphs (c)(11)(B)(i) through (iii) may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(37) of Standard 7.

(12) **“Prevention of Significant Deterioration (PSD) permit”** means any permit that is issued under

a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(13) “**Regulated NSR pollutant,**” for purposes of this regulation **of this regulation,** means the following:

(A) Oxides of nitrogen or any volatile organic compounds;

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

(C) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (c)(13)(A) or (B), provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. **Precursors identified by the Administrator for purposes of NSR are the following:**

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) Sulfur dioxide is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas;

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the State demonstrates to the Administrator’s satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area’s ambient PM_{2.5} concentrations;

(d) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the State demonstrates to the Administrator’s satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area’s ambient PM_{2.5} concentrations; or

(D) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued under this ruling. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

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

Pollutant Emission Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Particulate matter:

15 tpy of PM₁₀ emissions
10 tpy of direct PM_{2.5} ;
40 tpy of sulfur dioxide emissions;
40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under paragraph 13 of this section

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

(15) **“Significant emissions increase”** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (c)(14)) for that pollutant.

(16) **“Volatile organic compounds (VOC)”** is as defined in Regulation 61-62.1, Section I, *Definitions*.

(d) Permitting requirements

(1) **Conditions for approval.** If the Department finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.341 as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

(A) The major stationary source or major modification is required to meet an emission limitation which specifies the lowest achievable emission rate (LAER) for such source.

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

(C) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources. Emission reductions shall be in effect and enforceable prior to the date the new source or modification commences operation. The emission reductions shall be obtained in accordance with the following provisions:

(i) Where the permitted emissions limit allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date.

(iii)(a) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, federally enforceable, occurred on or after the date of the most recent emissions inventory, and if the area has an EPA-approved attainment plan.

(b) Such reductions may be credited if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provision of paragraph (d)(C)(iii)(a) are observed.

(iv) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(v) All emission reductions claimed as offset credit shall be federally enforceable and surplus;

(a) **Eligibility as Emission Offsets.** Any facility that has the potential to emit any NAAQS pollutant in an amount greater than 5 tons per year and that is located in a federally-designated nonattainment area shall be eligible to create emission offsets.

(1) To be eligible to be an emission offset:

(A) A reduction in emissions shall be real, permanent, quantifiable, enforceable, and surplus and must have occurred after December 31 of the base year inventory for those pollutants that are designated nonattainment by the EPA. The base year inventory date is two years preceding the date of nonattainment designation. However, the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.

(B) Emission reductions shall have been created by a facility that has obtained an enforceable air quality permit or letter of permit cancellation resulting from the surrender of the source's permit(s).

(2) Emission reductions may be created by any or a combination of the following methods:

(A) Installation of control equipment beyond what is necessary to comply with existing requirements;

(B) A change in process inputs, formulations, products or product mix, fuels, or raw materials;

(C) A reduction in actual emission rates;

(D) A reduction in hours of operation;

(E) Production curtailment or reduction in throughput;

(F) Shutdown of emitting sources; or

(G) Any other enforceable method that the Department determines to result in real,

permanent, quantifiable, enforceable, and surplus reduction of emissions.

(3) A completed emissions offset submittal must be received by the Department within one year of the date of the creation of the reductions. Emission offsets not requested within one year of the date of the creation of the reductions will be permanently retired. Prior to commencing operation of a permitted emissions unit, Department approval for the required emission offsets must be granted.

(4) The following are ineligible for emission offsets:

(A) Emission reductions that are not considered surplus, such as:

(i) Emission reductions that have previously been used to avoid Regulation 61-62.5 Standard No. 7, *Prevention of Significant Deterioration*, or Regulation 61-62.5 Standard No. 7.1, *Nonattainment New Source Review (NSR)*, through a netting demonstration;

(ii) Emission reductions of hazardous air pollutants, listed in Section 112(b) of the Clean Air Act, to the extent needed to comply with Regulation 61-62.61, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*, and Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, (however, emission reductions of hazardous volatile organic compound (VOC) and/or hazardous particulate matter (PM) air pollutants beyond the amount of reductions necessary to comply with Regulation 61-62.61, *NESHAP*, and Regulation 61-62.63, *NESHAP for Source Categories*, are considered surplus);

(iii) Emission reductions of nitrogen oxides (NO_x), sulfur dioxide (SO₂), particulate matter (PM) and VOCs to the extent needed to comply with Section 111 of the CAA and Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards (NSPS)*, (however, emission reductions of VOCs, NO_x, SO₂, PM and VOCs beyond the amount of reductions necessary to comply with Regulation 61-62.60, *South Carolina Designated Facility Plan and NSPS*, are considered surplus);

(iv) Emission units covered under an agreement, order or variance for exceeding an emission standard until compliance is demonstrated with the emission standard that is the subject of the agreement, order or variance;

(v) Sources that have operated less than 12 months;

(vi) Emission reductions required in order to comply with any State or Federal regulation not listed above, unless these reductions are in excess of the amount required by the State or Federal regulation; or

(vii) Facilities that have received a Department transmittal letter notifying of permit cancellation due to the facility's decision to close out its operating permit without a request to qualify facility emission reductions as offsets.

(b) Calculation of Emission Offsets

(1) The following procedure shall be followed to calculate emission offsets:

(A) The source shall calculate average annual actual emissions, in tons per year (tpy), before the emission reduction using data from the 24-month period immediately preceding the reduction in emissions. With the Department's approval, the use of a different time period, not to exceed 10 years

immediately preceding the reduction in emissions, may be allowed if the owner or operator of the source documents that such period is more representative of normal source operation, but not prior to the base year inventory date, which is the last day of the two years preceding the date of nonattainment designation; and

(B) The emission offsets created shall be calculated by subtracting the allowable emissions following the reduction from the average annual actual emissions prior to the reduction.

(2) For any emissions unit that has been operating for a consecutive period of at least 12 months but less than 24 months on the base year inventory date, based on the unit's potential to emit, emissions shall be calculated equal to the amount needed to complete a 24 month period on the base year inventory date.

(vi) **Location of offsetting emissions.** Emission offsets shall be obtained from sources currently operating within the same designated nonattainment area as the new or modified stationary source. Emission offsets may be obtained from another nonattainment area with the Department's approval only if (a) the other area has an equal or higher nonattainment classification than the area in which the proposed source is located and (b) emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

(vii) **Emission offsetting ratios.** Emission offsets shall be required in nonattainment areas in accordance with the following provisions:

(a) Emissions for carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), lead (Pb), and particulate matter (PM₁₀ and PM_{2.5}) nonattainment areas shall be offset at a ratio greater than one to one.

(b) Emissions for ozone nonattainment areas shall be offset for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in accordance with the following table:

Designation	Offset ratios
Subpart I	>1 to 1
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1
Extreme	1.5 to 1

(viii) Credit for an emissions reduction can be claimed to the extent that the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress.

(ix) [Reserved]

(x) [Reserved]

(xi) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (b)(3) of Standard 7) and the actual emissions before the modification (as defined in paragraph (c)(1)) for each emissions unit.

(D) The emission offsets must provide a positive net air quality benefit in the affected area as determined by 40 CFR 51, Appendix S, *Emission Offset Interpretative Ruling*.

(E) Alternative Sites Analysis. An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification shall be required.

(2) (A) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(B) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(C) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law.

(D) 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 enforcement 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 regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(3) The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (c)(11)(B)(i) through (iii) for calculating projected actual emissions.

(A) If the project requires construction permitting under Regulation 61-62.1, Section II "*Permit Requirements*," the owner or operator shall provide a copy of the information set out in paragraph (d)(3)(B) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II "*Permit Requirements*" is not required, the owner or operator shall maintain the information set out in paragraph (d)(3).

(B) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be

affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (c)(11)(B)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(C) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph (d)(3)(B)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(D) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within 60 days after the end of each year during which records must be generated under paragraph (d)(3)(B) setting out the unit's annual emissions during the year that preceded submission of the report.

(E) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (d)(3)(B), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (d)(3)(B)(iii)), by a significant amount (as defined in paragraph (c)(14)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (d)(3)(B)(iii). Such report shall be submitted to the Department within 60 days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to paragraph (d)(3)(C); and

(iii) Any other information needed for to make a compliance determination (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(4) If a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "*Permit Requirements*," the owner or operator shall provide notification of source status as part of the permit application to the Department.

(5) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (d)(3) for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(6) Public Participation. Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(7) In accordance with Regulation 61-30, *Environmental Protection Fees*, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(i) For the purposes of this paragraph (d)(7), the time frame for making a final determination shall be consistent with R. 61-30, *Environmental Protection Fees*, paragraph (H)(2)(c)(iii).

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

(iii) Make available in at least one location in each region in which the proposed plant 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.

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

(v) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the plant 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 plant or modification.

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

(vii) 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 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed plant or modification.

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

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

(x) Notify EPA of every action related to the consideration of the permit.

(e) **Exemptions.** The provisions of paragraph (d) shall not apply to a particular major stationary source or major modification if the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

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

- (B) Kraft pulp mills;
- (C) Portland cement plants;
- (D) Primary zinc smelters;
- (E) Iron and steel mills;
- (F) Primary aluminum ore reduction plants;
- (G) Primary copper smelters;
- (H) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (I) Hydrofluoric, sulfuric, or nitric acid plants;
- (J) Petroleum refineries;
- (K) Lime plants;
- (L) Phosphate rock processing plants;
- (M) Coke oven batteries;
- (N) Sulfur recovery plants;
- (O) Carbon black plants (furnace process);
- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants - The term chemical process plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour

heat input; and

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) **Actuals PALs.** The provisions in paragraphs (i)(1) through (15) govern actuals PALs.

(1) Applicability.

(i) The Department may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph (i)(1)(ii)) if the PAL meets the requirements in paragraphs (i)(1) through (15). The term "PAL" shall mean "actuals PAL" throughout paragraph (i).

(ii) The Department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(iii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (i)(1) through (15), and complies with the PAL permit:

(A) Is not a major modification for the PAL pollutant;

(B) Does not have to be approved through Regulation 61-62.5, Standard 7.1, "*Nonattainment New Source Review*"; however, will be reviewed through Regulation 61-62.1, Section II A. "*Permit Requirements*," and

(C) Is not subject to the provisions in paragraph (d)(2)(D) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(iv) Except as provided under paragraph (i)(1)(iii)(C), a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Definitions. The definitions in paragraphs (i)(2)(i) through (xi) shall apply to actuals PALs consistent with paragraphs (i)(1) through (15). When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (c) of this regulation; paragraph (b) of Regulation 61-62.5, Standard 7, "*Prevention of Significant Deterioration*" ("Standard 7"); or in the Clean Air Act.

(i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (c)(1)) of all emissions units (as defined in paragraph (b)(20) of Standard 7) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) **Allowable emissions** means "allowable emissions" as defined in paragraph (b)(3) of Standard 7, except as this definition is modified according to paragraphs (i)(2)(ii)(A) through (B).

(A) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(B) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(37) of Standard 7, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (c)(14) or in the Clean Air Act, whichever is lower.

(iv) **Major emissions unit** means:

(A) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(B) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (i)(1) through (i)(15).

(vi) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(viii) **PAL major modification** means, notwithstanding paragraphs (c)(6) and (8) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) **PAL permit** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1 Section II G, or the title V permit issued by the Department that establishes a PAL for a major stationary source.

(x) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

(xi) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (c)(13) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (i)(2)(iv).

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

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

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

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

(4) General requirements for establishing PALs.

(i) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (i)(4)(i)(A) through (G) are met.

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

(B) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (i)(5).

(C) The PAL permit shall contain all the requirements of paragraph (i)(7).

(D) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(E) Each PAL shall regulate emissions of only one pollutant.

(F) Each PAL shall have a PAL effective period of 10 years.

(G) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (i)(12) through (14) for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph (d)(1)(c) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) **Public participation requirement for PALs.** PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent paragraph (d)(6) and (d)(7). The Department must address all material comments before taking final action on the permit.

(6) **Setting the 10-year actuals PAL level.** (i) Except as provided in paragraph (i)(6)(ii), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (c)(2)) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (c)(14) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) For newly constructed units (which do not include modifications to existing units) on which operation began less than 24-months prior to the date of the PAL permit application, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) **Contents of the PAL permit.** The PAL permit must contain, at a minimum, the information in paragraphs (i)(7)(i) through (x).

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (i)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(iv) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (i)(9).

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

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (i)(12).

(viii) A requirement to retain the records required under paragraph (i)(13) on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (i)(14) by the required deadlines.

(x) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The requirements in paragraphs (i)(8)(i) and (ii) apply to actuals PALs.

(i) PAL effective period. The Department shall specify a PAL effective period of 10 years.

(ii) Reopening of the PAL permit.

(A) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph (d)(2).

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (i)(11).

(B) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Department may impose on the major stationary source under the State Implementation Plan.

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(C) Except for the permit reopening in paragraph (i)(8)(ii)(A)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (i)(5).

(9) Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in paragraph (i)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (i)(9)(i) through (v) shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (i)(9)(i)(A) through (B).

(A) Within the time frame specified for PAL renewals in paragraph (i)(10)(ii), the major stationary

source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (i)(10)(v), such distribution shall be made as if the PAL had been adjusted.

(B) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (i)(9)(i)(A), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph (c)(6).

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (d)(2)(D), but were eliminated by the PAL in accordance with the provisions in paragraph (i)(1)(iii)(C).

(10) **Renewal of a PAL.**

(i) The Department shall follow the procedures specified in paragraph (i)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(ii) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs (i)(10)(iii)(A) through (D).

(A) The information required in paragraphs (i)(3)(i) through (iii).

(B) A proposed PAL level.

(C) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(D) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(iv) **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (i)(10)(iv)(A) and (B). However, in no case may any such adjustment fail to comply with paragraph (i)(10)(iv)(C).

(A) If the emissions level calculated in accordance with paragraph (i)(6) is equal to or greater than 80 percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (i)(10)(iv)(B); or

(B) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(C) Notwithstanding paragraphs (i)(10)(iv)(A) and (B),

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (i)(11) (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

(i) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (i)(11)(i)(A) through (D).

(A) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(B) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement

that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

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

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

(ii) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (i)(11)(i)(B)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (i)(5).

(12) Monitoring requirements for PALs.

(i) General Requirements.

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

(B) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (i)(12)(ii)(A) through (D) and must be approved by the Department.

(C) Notwithstanding paragraph (i)(12)(i)(B), you may also employ an alternative monitoring approach that meets paragraph (i)(12)(i)(A) if approved by the Department.

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

(ii) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (i)(12)(iii) through (ix):

(A) Mass balance calculations for activities using coatings or solvents;

(B) Continuous emissions monitoring system (CEMS);

(C) Continuous parameter monitoring system (CPMS) or Predictive emissions monitoring system (PEMS); and

(D) Emission Factors.

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

(A) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(B) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(C) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(B) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(B) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(A) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(B) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(C) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines that

testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (i)(12)(iii) through (vii), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(A) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) Recordkeeping requirements.

(i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (i) and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(A) A copy of the PAL permit application and any applications for revisions to the PAL; and

(B) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (i)(14)(i) through (iii).

(i) Semi-Annual Report. The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (i)(14)(i)(A) through (G).

(A) The identification of owner and operator and the permit number.

(B) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (i)(13)(i).

(C) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(E) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(F) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph (i)(12)(vii).

(G) A signed statement by the responsible official (as defined by Regulation 61-62.70, *Title V Operating Permit Program*) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(A) The identification of owner and operator and the permit number;

(B) The PAL requirement that experienced the deviation or that was exceeded;

(C) Emissions resulting from the deviation or the exceedance; and

(D) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) Re-validation results. The owner or operator shall submit to the Department the results of any re-validation test or method within 3 months after completion of such test or method.

(15) Transition requirements.

(i) The Department may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) after the date these provisions become effective.

(ii) The Department may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of paragraphs (i)(1) through (15).

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

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**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

**REGULATION 61-62.5
AIR POLLUTION CONTROL STANDARDS**

**STANDARD NO. 7
PREVENTION OF SIGNIFICANT DETERIORATION**

(a)(1) Reserved.

(2) Applicability procedures.

(i) The requirements of this regulation apply to the construction of any new major stationary source (as defined in paragraph (b)(32)) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under 40 CFR 81.341.

(ii) The requirements of paragraphs (j) through (r) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this section otherwise provides.

(iii) No new major stationary source or major modification to which the requirements of paragraphs (j) through (r)(5) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(iv) The requirements of the program will be applied in accordance with the principles set out in paragraphs (a)(2)(iv)(a) through (f).

(a) Except as otherwise provided in paragraphs (a)(2)(v) and (vi), and consistent with the definition of major modification contained in paragraph (b)(30), a project is a major modification for a regulated New Source Review (NSR) pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (b)(50)), and a significant net emissions increase (as defined in paragraphs (b)(34) and (b)(49)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (a)(2)(iv)(c) through (f). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (b)(34). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(c) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (b)(41)) and the baseline actual

emissions (as defined in paragraphs (b)(4)(i) and (ii)), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(49)).

(d) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(37)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b)(4)(iii)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(49)).

(e) **[Reserved]**

(f) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) and (d) as applicable with respect to each emissions unit, equals or exceeds, the significant amount for that pollutant (as defined in paragraph (b)(49)).

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

(b) Definitions.

For the purposes of this regulation:

(1)(i) **“Actual emissions”** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(1)(ii) through (iv), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (aa). Instead, paragraphs (b)(41) and (b)(4) shall apply for those purposes.

(ii) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(iii) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(iv) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

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

(3) **“Allowable emissions”** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the

operating rate, or hours of operation, or both) and the most stringent of the following:

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

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

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

(4) **“Baseline actual emissions”** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (b)(4)(i) through (iv).

(i) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

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

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (b)(4)(i)(b).

(ii) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required under this section or under a plan approved by the Administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the 24-month period selected is appropriate.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

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

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded

an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (b)(4)(ii)(b) and (c).

(ii) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(iv) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (b)(4)(i), for other existing emissions units in accordance with the procedures contained in paragraph (b)(4)(ii), and for a new emissions unit in accordance with the procedures contained in paragraph (b)(4)(iii).

(5)(i) **“Baseline area”** means any intrastate area (and every part thereof) designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than $1 \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(ii) Area redesignations under section 107(d)(1)(D) or (E) of the Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 51.166 and would be constructed in the same state as the state proposing the redesignation.

(iii) Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with paragraph (b)(31)(iv).

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

(a) The actual emissions, as defined in paragraph (b)(1), representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b) (6)(ii); and

(b) The allowable emissions of major stationary sources that commenced construction before the

major source baseline date, but were not in operation by the applicable minor source baseline date.

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

(a) Actual emissions, as defined in paragraph (b)(1), from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases, as defined in paragraph (b)(1), at any stationary source occurring after the minor source baseline date.

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

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

(9) **“Building, structure, facility, or installation”** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

(10) **“Clean coal technology”** means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(11) **“Clean coal technology demonstration project”** means a project using funds appropriated under the heading “Department of Energy-Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(12) **[Reserved]**

(13) **“Commence”** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

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

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

(14) **“Complete”** means in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

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

(16) **“Continuous emissions monitoring system (CEMS)”** means all of the equipment that may be required to meet the data acquisition and availability requirements of this regulation, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(17) **“Continuous emissions rate monitoring system (CERMS)”** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(18) **“Continuous parameter monitoring system (CPMS)”** means all of the equipment necessary to meet the data acquisition and availability requirements of this regulation, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(19) **“Electric utility steam generating unit”** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(20) **“Emissions unit”** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in paragraph (b)(19). For purposes of this regulation, there are two types of emissions units as described in paragraphs (b)(20)(i) and (ii).

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

(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(20)(i). A replacement unit, as defined in paragraph (b)(45), is an existing emissions unit.

(21) **“Federal Land Manager”** means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(22) **“Federally enforceable”** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

(23) **“Fugitive emissions”** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(24) **“High terrain”** means any area having an elevation 900 feet or more above the base of the stack of a source.

(25) **“Indian Governing Body”** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self government.

(26) **“Indian Reservation”** means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

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

(28) **“Low terrain”** means any area other than high terrain.

(29) **“Lowest achievable emission rate (LAER)”** is as defined in paragraph (c)(5) of Regulation 61-62.5 Standard 7.1, *“Nonattainment New Source Review.”*

(30)(i) **“Major modification”** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(50)) of a regulated NSR pollutant (as defined in paragraph (b)(44)); and a significant net emissions increase of that pollutant from the major stationary source.

(ii) Any significant emissions increase (as defined in paragraph (b)(50)) from any emissions units or net emissions increase (as defined in paragraph (b)(34)) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(iii) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

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

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act;

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

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

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.

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

(h) [Reserved]

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(1) The State implementation plan for the State in which the project is located, and

(2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

(iv) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (aa) for a PAL for that pollutant. Instead, the definition at paragraph (aa)(2)(viii) shall apply.

(31)(i) **“Major source baseline date”** means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

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

(ii) **“Minor source baseline date”** means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulations. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

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

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Federal Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21; and

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

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the Department shall rescind a minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM₁₀ emissions.

(32)(i) **“Major stationary source”** means:

(a) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b) Notwithstanding the stationary source size specified in paragraph (b)(32)(i), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (b)(32), as a major stationary source, if the changes would constitute a major stationary source by itself.

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

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

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

- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat

input, and

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(33) “**Necessary preconstruction approvals or permits**” means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

(34)(i) “**Net emissions increase**” means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) The increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv); and

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (b)(34)(i)(b) shall be determined as provided in paragraph (b)(4), except that paragraphs (b)(4)(i)(c) and (b)(4)(ii)(d) shall not apply.

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

(a) The date five years before construction on the particular change commences; and

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

(iii) An increase or decrease in actual emissions is creditable only if:

(a) The Department has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(b) [Reserved]

(c) It occurs within five years before the date that the increase from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxide, that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available

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

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

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

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

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

(vii) [Reserved]

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

(ix) Paragraph (b)(1)(ii) shall not apply for determining creditable increases and decreases.

(35) [Reserved]

(36) [Reserved]

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

(38) **“Predictive emissions monitoring system (PEMS)”** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(39) **“Prevention of Significant Deterioration (PSD) program”** means the EPA-implemented major source preconstruction permit programs or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued under such a program is a major NSR permit.

(40) **“Project”** means a physical change in, or change in the method of operation of, an existing major stationary source.

(41)(i) **“Projected actual emissions”** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(ii) In determining the projected actual emissions under paragraph (b)(41)(i) (before beginning actual construction), the owner or operator of the major stationary source:

(a) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

(b) Shall include fugitive emissions to the extent quantifiable and emissions associated with startups and shutdowns; and

(c) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (b)(4) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(d) In lieu of using the method set out in paragraph (b)(41)(ii)(a) through (c), may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(37).

(42) **“Reactivation of a very clean coal-fired electric utility steam generating unit”** means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(i) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment;

(ii) Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(iii) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(iv) Is otherwise in compliance with the requirements of the Clean Air Act.

(43) **“Reasonably available control technology (RACT)”** is as defined in 40 CFR 51.100(o).

(44) **“Regulated NSR pollutant,”** for purposes of this regulation, means the following:

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(b) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(d) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or the EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to

that area's ambient PM_{2.5} concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Clean Air Act;

(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Clean Air Act; or

(iv) Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in section 112 of the Clean Air Act or added to the list pursuant to section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Clean Air Act.

(v) Reserved

(vi) Particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in PSD permits. Compliance with emissions limitations for PM, PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

(45) **“Replacement unit”** means an emissions unit for which all the criteria listed in paragraphs (b)(45)(i) through (iv) are met. No credible emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(i) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(46)(i) **“Repowering”** means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(ii) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(iii) The Department shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection and is granted an extension under section 409 of the Clean Air Act.

(47) **Reserved**

(48) **“Secondary emissions”** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas the stationary source modification which causes secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, from a vessel; or from the following:

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

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

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

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter:

25 tpy of particulate matter emissions;

15 tpy of PM₁₀ emissions

10 tpy of direct PM_{2.5} ;

40 tpy of sulfur dioxide emissions;

40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under (b)44 of this section

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H₂S): 10 tpy

Total reduced sulfur (including H₂S): 10 tpy

Reduced sulfur compounds (including H₂S): 10 tpy

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

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

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

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

(ii) “**Significant**” means, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that paragraph (b)(49)(i), does not list, any emissions rate.

(iii) Notwithstanding paragraph (b)(49)(i), significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m³, (24-hour average).

(50) “**Significant emissions increase**” means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (b)(49)) for that pollutant.

(51) “**Stationary source**” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(52) “**Temporary clean coal technology demonstration project**” means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(53) “**Volatile organic compounds (VOC)**” is as defined in Regulation 61-62.1, Section I, *Definitions*.

(c) Ambient air increments.

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

CLASS I		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	4
	PM ₁₀ , 24-hr maximum	8
Sulfur dioxide:	annual arithmetic mean	2
	24-hr maximum	5
	3-hr maximum	25

CLASS I		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Nitrogen dioxide:	annual arithmetic mean	2.5

CLASS II		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	17
	PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	512
Nitrogen dioxide:	annual arithmetic mean	25

CLASS III		
Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	34
	PM ₁₀ , 24-hr maximum	60
Sulfur dioxide:	annual arithmetic mean	40
	24-hr maximum	182
	3-hr maximum	700
Nitrogen dioxide:	annual arithmetic mean	50

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

(d) Ambient air ceilings.

No concentration of a pollutant shall exceed:

- (1) The concentration permitted under the national secondary ambient air quality standard, or
- (2) The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

(e) Restrictions on area classifications.

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

- (i) International parks,
- (ii) National wilderness areas which exceed 5,000 acres in size,
- (iii) National memorial parks which exceed 5,000 acres in size, and

(iv) National parks which exceed 6,000 acres in size.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this section.

(3) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this section.

(4) The following areas may be redesignated only as Class I or II:

(i) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(ii) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(f) [Reserved]

(g) Redesignation.

(1) All areas (except as otherwise provided under paragraph (e)) are designated Class II as of December 5, 1974. Redesignation (except as otherwise precluded by paragraph (e)) may be proposed by the respective States or Indian Governing Bodies, as provided below, subject to approval by the Administrator as a revision to the applicable State implementation plan.

(2) The State may submit to the Administrator a proposal to redesignate areas of the State Class I or Class II provided that:

(i) At least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

(ii) Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(iii) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(iv) Prior to the issuance of notice respecting the redesignation of an area that includes any Federal lands, the State has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of 60 days) to confer with the State respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the State shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and

(v) The State has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

(3) Any area other than an area to which paragraph (e) refers may be redesignated as Class III if –

(i) The redesignation would meet the requirements of paragraph (g)(2);

(ii) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session (unless State law provides that the redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation:

(iii) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(iv) Any permit application for any major stationary source or major modification, subject to review under paragraph (l), which could receive a permit under this section only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

(4) Lands within the exterior boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body. The appropriate Indian Governing Body may submit to the Department a proposal to redesignate areas Class I, Class II, or Class III: Provided, That:

(i) The Indian Governing Body has followed procedures equivalent to those required of a State under paragraphs (g)(2), (g)(3)(iii), and (g)(3)(iv); and

(ii) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located and which border the Indian Reservation.

(5) The Administrator shall disapprove, within 90 days of submission, a proposed redesignation of any area only if it is found, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this paragraph or is inconsistent with paragraph (e). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(6) If the Administrator disapproves any proposed redesignation, the State or Indian Governing Body, as appropriate, may resubmit the proposal after correcting the deficiencies noted by the Administrator.

(h) Stack heights.

(1) The degree of emission limitation required for control of any air pollutant under this section shall not be affected in any manner by--

(i) So much of the stack height of any source as exceeds good engineering practice, or

(ii) Any other dispersion technique.

(2) Paragraph (h)(1) shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

(i) Exemptions

(1) The requirements of paragraphs (j) through (r) shall not apply to a particular major stationary source or major modification, if:

(i) Construction commenced on the source or modification before August 7, 1977. The regulations at 40 CFR 52.21 as in effect before August 7, 1977, shall govern the review and permitting of any such source or modification; or

(ii) The source or modification was subject to the review requirements of 40 CFR 52.21(d)(1) as in effect before March 1, 1978, and the owner or operator:

(a) Obtained under 40 CFR 52.21 a final approval effective before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

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

(iii) The source or modification was subject to 40 CFR 52.21 as in effect before March 1, 1978, and the review of an application for approval for the stationary source or modification under 40 CFR 52.21 would have been completed by March 1, 1978, but for an extension of the public comment period pursuant to a request for such an extension. In such case, the application shall continue to be processed, and granted or denied, under 40 CFR 52.21 as in effect prior to March 1, 1978; or

(iv) The source or modification was not subject to 40 CFR 52.21 as in effect before March 1, 1978, and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before March 1, 1978;

(b) Commenced construction before March 19, 1979; and

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

(v) The source or modification was not subject to 40 CFR 52.21 as in effect on June 19, 1978 or under the partial stay of regulations published on February 5, 1980 (45 FR 7800), and the owner or operator:

(a) Obtained all final Federal, state and local preconstruction approvals or permits necessary under the applicable State Implementation Plan before August 7, 1980;

(b) Commenced construction within 18 months from August 7, 1980, or any earlier time required under the applicable State Implementation Plan; and

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

(vi) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the state in which the source or modification would be located requests that it be exempt from those requirements; or

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

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum ore reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;
- (s) Secondary metal production plants;
- (t) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- (w) Taconite ore processing plants;
- (x) Glass fiber processing plants;
- (y) Charcoal production plants;
- (z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- (aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act; or
- (viii) The source is a portable stationary source which has previously received a permit under this section, and
 - (a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and
 - (b) The emissions from the source would not exceed its allowable emissions; and
 - (c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
 - (d) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the Department.
- (ix) The source or modification was not subject to section 52.21 with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:
 - (a) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987;
 - (b) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and
 - (c) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time.
- (x) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Department subsequently determines that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of paragraphs (j) through (r) that were in effect before July 31, 1987 shall apply to such source or modification.
- (2) The requirements of paragraphs (j) through (r) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Clean Air Act.

(3) The requirements of paragraphs (k), (m) and (o) shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

- (i) Would impact no Class I area and no area where an applicable increment is known to be violated, and
- (ii) Would be temporary.

(4) The requirements of paragraphs (k), (m) and (o) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

(5) The Department may exempt a stationary source or modification from the requirements of paragraph (m), with respect to monitoring for a particular pollutant if:

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

- Carbon monoxide--575 $\mu\text{g}/\text{m}^3$, 8-hour average;
- Nitrogen dioxide--14 $\mu\text{g}/\text{m}^3$, annual average;
- Particulate matter--10 $\mu\text{g}/\text{m}^3$ of PM_{10} , 24-hour average;
- Sulfur dioxide--13 $\mu\text{g}/\text{m}^3$, 24-hour average;
- Ozone;¹
- Lead--0.1 $\mu\text{g}/\text{m}^3$, 3-month average;
- Fluorides--0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;
- Total reduced sulfur--10 $\mu\text{g}/\text{m}^3$, 1-hour average;
- Hydrogen sulfide--0.2 $\mu\text{g}/\text{m}^3$, 1-hour average;
- Reduced sulfur compounds--10 $\mu\text{g}/\text{m}^3$, 1-hour average; or

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

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i), or the pollutant is not listed in paragraph (i)(5)(i).

(6) The requirements for best available control technology in paragraph (j) and the requirements for air quality analyses in paragraph (m)(1), shall not apply to a particular stationary source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submitted an application for a permit under those regulations before August 7, 1980, and the Department subsequently determines that the application as submitted before that date was complete. Instead, the requirements at 40 CFR 52.21(j) and (n) as in effect on June 19, 1978 apply to any such source or modification.

(7)(i) The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) shall not apply to a particular source or modification that was subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date was complete with respect to the requirements of this regulation other than those in paragraphs (m)(1)(ii) through (iv), and with respect to the requirements for such analyses at 40 CFR 52.21(m)(2) as in effect on

June 19, 1978. Instead, the latter requirements shall apply to any such source or modification.

(ii) The requirements for air quality monitoring in paragraphs (m)(1)(ii) through (iv) shall not apply to a particular source or modification that was not subject to 40 CFR 52.21 as in effect on June 19, 1978, if the owner or operator of the source or modification submits an application for a permit under this section on or before June 8, 1981, and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements in paragraphs (m)(1)(ii) through (iv).

(8)(i) At the discretion of the Department, the requirements for air quality monitoring of PM₁₀ in paragraphs (m)(1)(i)--(iv) may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Department subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i) through (iv).

(ii) The requirements for air quality monitoring of PM₁₀ in paragraphs (m)(1), (ii) and (iv) and (m)(3) shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii), except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over a shorter period.

(9) The requirements of paragraph (k)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increase took effect as part of the applicable implementation plan and the Department subsequently determined that the application as submitted before that date was complete.

(10) The requirements in paragraph (k)(2) shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM₁₀ if

(i) the owner or operator of the source or modification submitted an application for a permit under this section before the provisions embodying the maximum allowable increases for PM₁₀ took effect in an implementation plan to which this section applies, and

(ii) the Department subsequently determined that the application as submitted before that date was otherwise complete. Instead, the requirements in paragraph (k)(2) shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

(j) Control technology review.

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

(2) A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(3) A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each

proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

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

(k) Source impact analysis.

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

- (1) Any national ambient air quality standard in any air quality control region; or
- (2) Any applicable maximum allowable increase over the baseline concentration in any area.

(l) Air Quality Models

(1) All estimates of ambient concentrations required under this paragraph shall be based on applicable air quality models, data bases, and other requirements specified in 40 CFR 51 appendix W (Guideline on Air Quality Models).

(2) Where an air quality model specified in 40 CFR 51 appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Department must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q).

(m) Air quality analysis--

(1) Preapplication analysis.

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

- (a) For the source, each pollutant that it would have the potential to emit in a significant amount;
- (b) For the modification, each pollutant for which it would result in a significant net emissions increase.

(ii) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(iii) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of

determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

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

(v) For any application which becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv), between June 8, 1981, and February 9, 1982, the data that paragraph (m)(1)(iii), requires shall have been gathered over at least the period from February 9, 1981, to the date the application becomes otherwise complete, except that:

(a) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over at least the period required by those regulations.

(b) If the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that paragraph (m)(1)(iii), requires shall have been gathered over at least that shorter period.

(c) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Department may waive the otherwise applicable requirements of this paragraph (v) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

(vi) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of 40 CFR 51 Appendix S, section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph (m)(1).

(vii) For any application that becomes complete, except as to the requirements of paragraphs (m)(1)(iii) and (iv) pertaining to PM₁₀, after December 1, 1988 and no later than August 1, 1989 the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete, except that if the Department determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

(viii) With respect to any requirements for air quality monitoring of PM₁₀ under paragraphs (i)(11)(i) and (ii) the owner or operator of the source or modification shall use a monitoring method approved by the Department and shall estimate the ambient concentrations of PM₁₀ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Department.

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

(3) Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR 58 of during the operation of monitoring stations for purposes of satisfying paragraph (m).

(n) Source information.

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

(1) With respect to a source or modification to which paragraphs (j), (l), (n) and (p) apply, such information shall include:

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

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

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

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

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

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

(o) Additional impact analyses.

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

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

(3) Visibility monitoring. The Department may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(p) Sources impacting Federal Class I areas--additional requirements--

(1) Notice to Federal land managers. The Department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Department shall also provide the

Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q), and shall make available to them any materials used in making that determination, promptly after the Department makes such determination. Finally, the Department shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) Federal Land Manager. The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Department, whether a proposed source or modification will have an adverse impact on such values.

(3) Visibility analysis. The Department shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1), that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Department finds that such an analysis does not demonstrate to the satisfaction of the Department that an adverse impact on visibility will result in the Federal Class I area, the Department must, in the notice of public hearing on the permit application, either explain its decision or give notice as to where the explanation can be obtained.

(4) Denial--impact on air quality related values. The Federal Land Manager of any such lands may demonstrate to the Department that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Department concurs with such demonstration, then the permit shall not be issued.

(5) Class I variances. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies, the State may authorize the Administrator. Provided, That the applicable requirements of this regulation are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant		Maximum Allowable Increase (micrograms per cubic meter)
Particulate matter:	PM ₁₀ , annual arithmetic mean	17
	PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	annual arithmetic mean	20
	24-hr maximum	91
	3-hr maximum	325
Nitrogen dioxide:	annual arithmetic mean	25

(6) Sulfur dioxide variance by Governor with Federal Land Manager's concurrence. The owner or operator of a proposed source or modification which cannot be approved under paragraph (q)(4) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any Class I area and, in the case of Federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related

values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the Department shall issue a permit to such source or modification pursuant to the requirements of paragraph (q)(7): Provided, that the applicable requirements of this regulation are otherwise met.

(7) Variance by the Governor with the President's concurrence. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if it is found that the variance is in the national interest. If the variance is approved, the Department shall issue a permit pursuant to the requirements of paragraph (q)(7): Provided, that the applicable requirements of this regulation are otherwise met.

(8) Emission limitations for Presidential or gubernatorial variance. In the case of a permit issued pursuant to paragraph (q)(5) or (6) the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE (Micrograms per cubic meter)		
Period of exposure	Terrain Areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(q) Public participation.

(1) Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(2) In accordance with Regulation 61-30, *Environmental Protection Fees*, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

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

(ii) Make available in at least one location in each region in which the proposed plant 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.

(iii) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed plant or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the plant or modification, and the opportunity for

comment at a public hearing as well as written public comment.

(iv) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the plant 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 plant or modification.

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

(vi) 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 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed plant or modification.

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

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

(ix) Notify EPA of every action related to the consideration of the permit.

(3) The requirements of Section (q), Public Participation, of this standard shall not apply to any major plant or major modification which Section (i), Review of Major Stationary Sources and Major Modifications, would exempt from the requirements of Sections (k), (m), and (o), but only to the extent that, with respect to each of the criteria for construction approval under the South Carolina State Implementation Plan and for exemption under Section (i), requirements providing the public with at least as much participation in each material determination as those of Section (q) have been met in the granting of such construction approval.

(r) Source obligation. In addition to all other applicable requirements specified in this regulation, the owner or operator shall comply with the requirements of paragraphs (r)(1) through (r)(8).

(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(2) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(3) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State implementation plan and any other requirements under local, State, or Federal law.

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

(5) Reserved

(6) **Monitoring, recordkeeping and reporting.** The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) If the project requires construction permitting under Regulation 61-62.1, Section II “Permit Requirements”, the owner or operator shall provide a copy of the information set out in paragraph (r)(6)(ii) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II “Permit Requirements” is not required, the owner or operator shall maintain the information set out in paragraph (r)(6)(ii).

(ii) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) A description of the project;

(b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph (r)(6)(ii)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within 60 days after the end of each year during which records must be generated under paragraph (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator

shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (r)(6)(ii), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (r)(6)(ii)(c)), by a significant amount (as defined in paragraph (b)(49)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (r)(6)(ii)(c). Such report shall be submitted to the Department within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii); and

(c) Any other information needed to make a compliance determination (*e.g.*, an explanation as to why the emissions differ from the preconstruction projection).

(7) If a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "Permit Requirements", the owner or operator shall provide notification of source status as part of the permit application to the Department.

(8) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (r)(6) available for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(s) through (u)(3) - Reserved.

(u)(4) In the case of a source or modification which proposes to construct in a class III area, emissions from which would cause or contribute to air quality exceeding the maximum allowable increase applicable if the area were designated a class II area, and where no standard under section 111 of the act has been promulgated for such source category, the Administrator must approve the determination of best available control technology as set forth in the permit.

(v) Innovative control technology.

(1) An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than the close of the comment period under 40 CFR 124.10 to approve a system of innovative control technology.

(2) The Department shall, with the consent of the governor(s) of the affected state(s), determine that the source or modification may employ a system of innovative control technology, if:--

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

(ii) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph (j)(2), by a date specified by the Department. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

(iii) The source or modification would meet the requirements of paragraphs (j) and (k), based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Department;

(iv) The source or modification would not before the date specified by the Department:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; or

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

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

(vi) The provisions of paragraph (p) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

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

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

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

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

(4) If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph (v)(3), the Department may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

(w) Permit rescission.

(1) Any permit issued under this section or a prior version of this regulation shall remain in effect, unless and until it expires under paragraph (s) or is rescinded.

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this regulation, may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Department shall grant an application for rescission if the application shows that this section would not apply to the source or modification.

(4) If the Department rescinds a permit under this paragraph, 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 60 days of the rescission shall be considered adequate notice.

(x) [Reserved]

(y) [Reserved]

(z) [Reserved]

(aa) Actuals PALs. The provisions in paragraphs (aa)(1) through (15) govern actuals PALs.

(1) Applicability.

(i) The Department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in paragraphs (aa)(1) through (15). The term "PAL" shall mean "actuals PAL" throughout paragraph (aa).

(ii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (aa)(1) through (15), and complies with the PAL permit:

(a) Is not a major modification for the PAL pollutant;

(b) Does not have to be approved through Regulation 61-62.5, Standard 7, *Prevention of Significant Deterioration*. However, will be reviewed through R. 61-62.1, Section II A. *Permit Requirements*; and

(c) Is not subject to the provisions in paragraph (r)(4) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

(iii) Except as provided under paragraph (aa)(1)(ii)(c), a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Definitions. The definitions in paragraphs (aa)(2)(i) through (xi) shall apply to actual PALs consistent with paragraphs (aa)(1) through (15). When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (b) or in the Clean Air Act.

(i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (b)(4)) of all emissions units (as defined in paragraph (b)(20)) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) **"Allowable emissions"** means "allowable emissions" as defined in paragraph (b)(3), except as this definition is modified according to paragraphs (aa)(2)(ii)(a) and (b).

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(37), except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) **"Small emissions unit"** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (b)(49) or in the Clean Air Act, whichever is lower.

(iv) **"Major emissions unit"** means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section

182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) **“Plantwide applicability limitation (PAL)”** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (aa)(1) through (15).

(vi) **“PAL effective date”** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) **“PAL effective period”** means the period beginning with the PAL effective date and ending 10 years later.

(viii) **“PAL major modification”** means, notwithstanding paragraphs (b)(30) and (b)(34) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) **“PAL permit”** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1, Section II G, or the title V permit issued by the Department that establishes a PAL for a major stationary source.

(x) **“PAL pollutant”** means the pollutant for which a PAL is established at a major stationary source.

(xi) **“Significant emissions unit”** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (b)(49) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (aa)(2)(iv).

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

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

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

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

(4) General requirements for establishing PALs.

(i) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (aa)(4)(i)(a) through (g) are met.

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

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (aa)(5).

(c) The PAL permit shall contain all the requirements of paragraph (aa)(7).

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (aa)(12) through (14) for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with section (q) “Public Participation” of this regulation. The Department must address all material comments before taking final action on the permit.

(6) Setting the 10-year actuals PAL level.

(i) Except as provided in paragraph (aa)(6)(ii), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(4)) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(49) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Department is aware of prior to the issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the

original baseline emissions of such unit(s).

(ii) Emissions from units (which do not include modification to existing units) on which operation began less than 24-months prior to the date of the PAL permit application must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) Contents of the PAL permit. The PAL permit must contain, at a minimum, the information in paragraphs (aa)(7)(i) through (x).

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (aa)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(iv) A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (aa)(9).

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

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (aa)(12).

(viii) A requirement to retain the records required under paragraph (aa)(13) on site. Such records may be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (aa)(14) by the required deadlines.

(x) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The requirements in paragraphs (aa)(8)(i) and (ii) apply to actuals PALs.

(i) **PAL effective period.** The Department shall specify a PAL effective period of 10 years.

(ii) **Reopening of the PAL permit.**

(a) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable

emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (aa)(11).

(b) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(c) Except for the permit reopening in paragraph (aa)(8)(ii)(a)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (aa)(5).

(9) Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in paragraph (aa)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (aa)(9)(i) through (v) shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (aa)(9)(i)(a) and (b).

(a) Within the time frame specified for PAL renewals in paragraph (aa)(10)(ii), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (aa)(10)(v), such distribution shall be made as if the PAL had been adjusted.

(b) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (aa)(9)(i)(b), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be

subject to major NSR requirements if such change meets the definition of major modification in paragraph (b)(30).

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (r)(4), but were eliminated by the PAL in accordance with the provisions in paragraph (aa)(1)(ii)(c).

(10) Renewal of a PAL.

(i) The Department shall follow the procedures specified in paragraph (aa)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(ii) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs (aa)(10)(iii)(a) through (d).

(a) The information required in paragraphs (aa)(3)(i) through (iii).

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(iv) **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (aa)(10)(iv)(a) and (b). However, in no case may any such adjustment fail to comply with paragraph (aa)(10)(iv)(c).

(a) If the emissions level calculated in accordance with paragraph (aa)(6) is equal to or greater than 80 percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (aa)(10)(iv)(b); or

(b) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(c) Notwithstanding paragraphs (aa)(10)(iv)(a) and (b):

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (aa)(11) (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

(i) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (aa)(11)(i)(a) through (d).

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

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

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

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

(ii) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (aa)(11)(i)(b)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (aa)(5).

(12) Monitoring requirements for PALs. (i) General requirements. (a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the

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

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

(c) Notwithstanding paragraph (aa)(12)(i)(b), the owner or operator may also employ an alternative monitoring approach that meets paragraph (aa)(12)(i)(a) if approved by the Department.

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

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

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) Emission factors.

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

(a) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions

shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (aa)(12)(iii) through (vii), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(a) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) Recordkeeping requirements. (i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (aa) and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(a) A copy of the PAL permit application and any applications for revisions to the PAL; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) **Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (aa)(14)(i) through (iii).

(i) **Semi-annual report.** The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (aa)(14)(i)(a) through (g).

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (aa)(13)(i).

(c) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by (aa)(12)(vii).

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) **Deviation report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The PAL requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) **Re-validation results.** The owner or operator shall submit to the Department the results of any re-validation test or method within 3 months after completion of such test or method.

(15) Transition requirements.

(i) The Department may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) after the date these provisions become effective.

(ii) The Department may supersede any PAL that was established prior to the date these provisions become effective with a PAL that complies with the requirements of paragraphs (aa)(1) through (15).

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

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**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AIR POLLUTION CONTROL REGULATIONS AND STANDARDS**

**REGULATION 61-62.5
AIR POLLUTION CONTROL STANDARDS**

**STANDARD NO. 7.1
NONATTAINMENT NEW SOURCE REVIEW (NSR)**

(a) Applicability

(1) This rule applies to all major stationary sources constructed or modified in any nonattainment area as designated in 40 CFR 81.341 ("nonattainment area") if the emissions from such facility will cause or contribute to concentrations of a regulated NSR pollutant (as defined in paragraph (c)(13)) for which the nonattainment area was designated as nonattainment. Applicability to this regulation shall be based on the pollutant emission rate set out in paragraph (c)(14) for only those pollutants for which the area's designation is based.

(A) The requirements of paragraph (d) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as provided in paragraph (b).

(B) No new major stationary source or major modification to which the requirements of paragraph (d) apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The Department has authority to issue any such permit.

(2) **Redesignation to attainment.** If any nonattainment area to which this regulation applies is later designated in 40 CFR 81.341 as attainment, all sources in that nonattainment area subject to this regulation before the redesignation date shall continue to comply with this regulation.

(3) For any area designated as nonattainment a major stationary source or major modification that is major for volatile organic compounds or oxides of nitrogen is also major for ozone.

(b) Applicability procedures.

(1) Except as otherwise provided in paragraphs (b)(7) and (8), and consistent with the definition of major modification contained in paragraph (c)(6)(A), a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases – a significant emissions increase (as defined in paragraph (c)(15)), and a significant net emissions increase (as defined in paragraphs (c)(8) and (15)). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (*i.e.*, the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs (b)(1) through (6). The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (*i.e.*, the second step of the process) is contained in the definition in paragraph (c)(8). Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in paragraph (c)(11)) and the baseline actual emissions (as defined in paragraphs (c)(2)(A) and (B), as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in paragraph (b)(37) of Regulation 61-62.5 Standard 7, “*Prevention of Significant Deterioration*” (“Standard 7”)) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (c)(2)(C)) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(5) [Reserved]

(6) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (b)(3) and (4) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in paragraph (c)(14)).

(7) For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with requirements under paragraph (i).

(c) **Definitions.** The following definitions apply to this Standard only. Any other term contained within this Standard is as defined where indicated in Regulation 61-62.5, Standard 7, “*Prevention of Significant Deterioration.*”

(1)(A) **“Actual emissions”** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (c)(1)(B) through (D), except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph (i). Instead, paragraphs (c)(2) and (c)(11) shall apply for those purposes.

(B) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(C) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(D) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) **“Baseline actual emissions”** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs (c)(2)(A) through (D).

(A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns.

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

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph (c)(2)(A)(ii).

(B) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Department for a permit required either under this section or under a plan approved by the Administrator whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The Department reserves the right to determine if the 24-month period selected is appropriate.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns.

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

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of paragraph (d)(1)(c)(viii).

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs (c)(2)(B)(ii) and (iii).

(C) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(D) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (c)(2)(A), for other existing emissions units in accordance with the procedures contained in paragraph (c)(2)(B), and for a new emissions unit in accordance with the procedures contained in paragraph (c)(2)(C).

(3) “**Best available control technology (BACT)**” means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR 60 or 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of 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.

(4) [Reserved]

(5) “**Lowest achievable emission rate (LAER)**” means, for any source, the more stringent rate of emissions based on the following:

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

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(6)(A) “**Major modification**” means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant (as defined in paragraph (c)(13)); and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(B) Any significant emissions increase (as defined in paragraph (c)(15)) from any emissions units or net emissions increase (as defined in paragraph (c)(8)) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(C) 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 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Clean Air Act;

(iv) Use of an alternative fuel at a steam 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;

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, or

(b) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976.

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

(viii) [Reserved]

(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The South Carolina State Implementation Plan, and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

(D) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under paragraph (i) for a PAL for that pollutant. Instead, the definition at paragraph (i)(2)(viii) shall apply.

(7)(A) **“Major stationary source”** means:

(i) Any stationary source of air pollutants which emits, or has the potential to emit 100 tons per year or more of any regulated NSR pollutant, or

(ii) Any physical change that would occur at a stationary source not qualifying under paragraph (c)(7)(A)(i) as a major stationary source, if the change would constitute a major stationary source by itself.

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

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

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;

(xx) Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(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; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

(8)(A) **“Net emissions increase”** means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (b); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph (c)(8)(A)(ii) shall be determined as provided in paragraph (c)(2), except that paragraphs (c)(2)(A)(iii) and (c)(2)(B)(iv) shall not apply.

(B) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(C) An increase or decrease in actual emissions is creditable only if:

(i) It occurs within five years before construction on the particular change commences; and

(ii) The Department has not relied on it in issuing a permit for the source, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

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

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

(iii) The Department has not relied on it in issuing any permit or the Department has not relied on it in demonstrating attainment or reasonable further progress;

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

(F) 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.

(G) Paragraph (c)(1)(B) shall not apply for determining creditable increases and decreases or after a change.

(9) **“Nonattainment major new source review (NSR) program”** means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this regulation, or a program that implements 40 CFR 51, appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.

(10) **[Reserved]**

(11)(A) **“Projected actual emissions”** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(B) In determining the projected actual emissions under paragraph (c)(11)(A) before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns; and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under paragraph (c)(2) and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(iv) In lieu of using the method set out in paragraphs (c)(11)(B)(i) through (iii) may elect to use the emissions unit's potential to emit, in tons per year, as defined under paragraph (b)(37) of Standard 7.

(12) **“Prevention of Significant Deterioration (PSD) permit”** means any permit that is issued under

a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(13) **“Regulated NSR pollutant,”** for purposes of this regulation, means the following:

(A) Oxides of nitrogen or any volatile organic compounds;

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

(C) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (c)(13)(A) or (B), provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) Sulfur dioxide is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas;

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the State demonstrates to the Administrator’s satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area’s ambient PM_{2.5} concentrations;

(d) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the State demonstrates to the Administrator’s satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area’s ambient PM_{2.5} concentrations; or

(D) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued under this ruling. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

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

Pollutant Emission Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Particulate matter:

15 tpy of PM₁₀ emissions
10 tpy of direct PM_{2.5} ;
40 tpy of sulfur dioxide emissions;
40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under paragraph 13 of this section

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

(15) **“Significant emissions increase”** means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in paragraph (c)(14)) for that pollutant.

(16) **“Volatile organic compounds (VOC)”** is as defined in Regulation 61-62.1, Section I, *Definitions*.

(d) Permitting requirements

(1) **Conditions for approval.** If the Department finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.341 as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

(A) The major stationary source or major modification is required to meet an emission limitation which specifies the lowest achievable emission rate (LAER) for such source.

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

(C) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources. Emission reductions shall be in effect and enforceable prior to the date the new source or modification commences operation. The emission reductions shall be obtained in accordance with the following provisions:

(i) Where the permitted emissions limit allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date.

(iii)(a) Emissions reductions achieved by shutting down an existing source or curtailing

production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, federally enforceable, occurred on or after the date of the most recent emissions inventory, and if the area has an EPA-approved attainment plan.

(b) Such reductions may be credited if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provision of paragraph (d)(C)(iii)(a) are observed.

(iv) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(v) All emission reductions claimed as offset credit shall be federally enforceable and surplus;

(a) **Eligibility as Emission Offsets.** Any facility that has the potential to emit any NAAQS pollutant in an amount greater than 5 tons per year and that is located in a federally-designated nonattainment area shall be eligible to create emission offsets.

(1) To be eligible to be an emission offset:

(A) A reduction in emissions shall be real, permanent, quantifiable, enforceable, and surplus and must have occurred after December 31 of the base year inventory for those pollutants that are designated nonattainment by the EPA. The base year inventory date is two years preceding the date of nonattainment designation. However, the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.

(B) Emission reductions shall have been created by a facility that has obtained an enforceable air quality permit or letter of permit cancellation resulting from the surrender of the source's permit(s).

(2) Emission reductions may be created by any or a combination of the following methods:

(A) Installation of control equipment beyond what is necessary to comply with existing requirements;

(B) A change in process inputs, formulations, products or product mix, fuels, or raw materials;

(C) A reduction in actual emission rates;

(D) A reduction in hours of operation;

(E) Production curtailment or reduction in throughput;

(F) Shutdown of emitting sources; or

(G) Any other enforceable method that the Department determines to result in real, permanent, quantifiable, enforceable, and surplus reduction of emissions.

(3) A completed emissions offset submittal must be received by the Department within one year of the date of the creation of the reductions. Emission offsets not requested within one year of the date of the creation of the reductions will be permanently retired. Prior to commencing operation of a permitted emissions unit, Department approval for the required emission offsets must be granted.

(4) The following are ineligible for emission offsets:

(A) Emission reductions that are not considered surplus, such as:

(i) Emission reductions that have previously been used to avoid Regulation 61-62.5 Standard No. 7, *Prevention of Significant Deterioration*, or Regulation 61-62.5 Standard No. 7.1, *Nonattainment New Source Review (NSR)*, through a netting demonstration;

(ii) Emission reductions of hazardous air pollutants, listed in Section 112(b) of the Clean Air Act, to the extent needed to comply with Regulation 61-62.61, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*, and Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, (however, emission reductions of hazardous volatile organic compound (VOC) and/or hazardous particulate matter (PM) air pollutants beyond the amount of reductions necessary to comply with Regulation 61-62.61, *NESHAP*, and Regulation 61-62.63, *NESHAP for Source Categories*, are considered surplus);

(iii) Emission reductions of nitrogen oxides (NO_x), sulfur dioxide (SO₂), particulate matter (PM) and VOCs to the extent needed to comply with Section 111 of the CAA and Regulation 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards (NSPS)*, (however, emission reductions of VOCs, NO_x, SO₂, PM and VOCs beyond the amount of reductions necessary to comply with Regulation 61-62.60, *South Carolina Designated Facility Plan and NSPS*, are considered surplus);

(iv) Emission units covered under an agreement, order or variance for exceeding an emission standard until compliance is demonstrated with the emission standard that is the subject of the agreement, order or variance;

(v) Sources that have operated less than 12 months;

(vi) Emission reductions required in order to comply with any State or Federal regulation not listed above, unless these reductions are in excess of the amount required by the State or Federal regulation; or

(vii) Facilities that have received a Department transmittal letter notifying of permit cancellation due to the facility's decision to close out its operating permit without a request to qualify facility emission reductions as offsets.

(b) Calculation of Emission Offsets

(1) The following procedure shall be followed to calculate emission offsets:

(A) The source shall calculate average annual actual emissions, in tons per year (tpy), before the emission reduction using data from the 24-month period immediately preceding the reduction in emissions. With the Department's approval, the use of a different time period, not to exceed 10 years immediately preceding the reduction in emissions, may be allowed if the owner or operator of the source

documents that such period is more representative of normal source operation, but not prior to the base year inventory date, which is the last day of the two years preceding the date of nonattainment designation; and

(B) The emission offsets created shall be calculated by subtracting the allowable emissions following the reduction from the average annual actual emissions prior to the reduction.

(2) For any emissions unit that has been operating for a consecutive period of at least 12 months but less than 24 months on the base year inventory date, based on the unit's potential to emit, emissions shall be calculated equal to the amount needed to complete a 24 month period on the base year inventory date.

(vi) **Location of offsetting emissions.** Emission offsets shall be obtained from sources currently operating within the same designated nonattainment area as the new or modified stationary source. Emission offsets may be obtained from another nonattainment area with the Department's approval only if (a) the other area has an equal or higher nonattainment classification than the area in which the proposed source is located and (b) emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

(vii) **Emission offsetting ratios.** Emission offsets shall be required in nonattainment areas in accordance with the following provisions:

(a) Emissions for carbon monoxide (CO), nitrogen dioxide (NO₂), sulfur dioxide (SO₂), lead (Pb), and particulate matter (PM₁₀ and PM_{2.5}) nonattainment areas shall be offset at a ratio greater than one to one.

(b) Emissions for ozone nonattainment areas shall be offset for volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in accordance with the following table:

Designation	Offset ratios
Subpart I	>1 to 1
Marginal	1.1 to 1
Moderate	1.15 to 1
Serious	1.2 to 1
Severe	1.3 to 1
Extreme	1.5 to 1

(viii) Credit for an emissions reduction can be claimed to the extent that the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR part 51 subpart I or the Department has not relied on it in demonstrating attainment or reasonable further progress.

(ix) [Reserved]

(x) [Reserved]

(xi) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification (as defined by paragraph (b)(3) of Standard 7) and the actual emissions before the modification (as defined in paragraph (c)(1)) for each emissions unit.

(D) The emission offsets must provide a positive net air quality benefit in the affected area as determined by 40 CFR 51, Appendix S, *Emission Offset Interpretative Ruling*.

(E) Alternative Sites Analysis. An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification shall be required.

(2) (A) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(B) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(C) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, State or Federal law.

(D) 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 enforcement 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 regulations approved pursuant to this section shall apply to the source or modification as though construction had not yet commenced on the source or modification;

(3) The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs (c)(11)(B)(i) through (iii) for calculating projected actual emissions.

(A) If the project requires construction permitting under Regulation 61-62.1, Section II "*Permit Requirements*," the owner or operator shall provide a copy of the information set out in paragraph (d)(3)(B) as part of the permit application to the Department. If construction permitting under Regulation 61-62.1, Section II "*Permit Requirements*" is not required, the owner or operator shall maintain the information set out in paragraph (d)(3).

(B) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (c)(11)(B)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(C) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in paragraph (d)(3)(B)(ii); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(D) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within 60 days after the end of each year during which records must be generated under paragraph (d)(3)(B) setting out the unit's annual emissions during the year that preceded submission of the report.

(E) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in paragraph (d)(3)(B), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph (d)(3)(B)(iii)), by a significant amount (as defined in paragraph (c)(14)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph (d)(3)(B)(iii). Such report shall be submitted to the Department within 60 days after the end of such year. The report shall contain the following:

- (i) The name, address and telephone number of the major stationary source;
- (ii) The annual emissions as calculated pursuant to paragraph (d)(3)(C); and
- (iii) Any other information needed for to make a compliance determination (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(4) If a project at a source with a PAL requires construction permitting under Regulation 61-62.1, Section II, "*Permit Requirements*," the owner or operator shall provide notification of source status as part of the permit application to the Department.

(5) The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph (d)(3) for review upon a request for inspection by the Department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

(6) Public Participation. Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted and transmit a copy of such application to EPA. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this regulation, the date on which the Department received all required information.

(7) In accordance with Regulation 61-30, *Environmental Protection Fees*, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

- (i) For the purposes of this paragraph (d)(7), the time frame for making a final determination shall be

consistent with R. 61-30, *Environmental Protection Fees*, paragraph (H)(2)(c)(iii).

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

(iii) Make available in at least one location in each region in which the proposed plant 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.

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

(v) Send a copy of the notice of public comment to the applicant, the Administrator of EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the plant 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 plant or modification.

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

(vii) 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 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed plant or modification.

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

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

(x) Notify EPA of every action related to the consideration of the permit.

(e) **Exemptions.** The provisions of paragraph (d) shall not apply to a particular major stationary source or major modification if the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

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

(B) Kraft pulp mills;

- (C) Portland cement plants;
- (D) Primary zinc smelters;
- (E) Iron and steel mills;
- (F) Primary aluminum ore reduction plants;
- (G) Primary copper smelters;
- (H) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (I) Hydrofluoric, sulfuric, or nitric acid plants;
- (J) Petroleum refineries;
- (K) Lime plants;
- (L) Phosphate rock processing plants;
- (M) Coke oven batteries;
- (N) Sulfur recovery plants;
- (O) Carbon black plants (furnace process);
- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;

(T) Chemical process plants - The term chemical process plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

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

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

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

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

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Clean Air Act.

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

(i) **Actuals PALs.** The provisions in paragraphs (i)(1) through (15) govern actuals PALs.

(1) Applicability.

(i) The Department may approve the use of an actuals PAL for any existing major stationary source (except as provided in paragraph (i)(1)(ii)) if the PAL meets the requirements in paragraphs (i)(1) through (15). The term "PAL" shall mean "actuals PAL" throughout paragraph (i).

(ii) The Department shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(iii) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in paragraphs (i)(1) through (15), and complies with the PAL permit:

(A) Is not a major modification for the PAL pollutant;

(B) Does not have to be approved through Regulation 61-62.5, Standard 7.1, "*Nonattainment New Source Review*"; however, will be reviewed through Regulation 61-62.1, Section II A. "*Permit Requirements*," and

(C) Is not subject to the provisions in paragraph (d)(2)(D) (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

(iv) Except as provided under paragraph (i)(1)(iii)(C), a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) Definitions. The definitions in paragraphs (i)(2)(i) through (xi) shall apply to actuals PALs consistent with paragraphs (i)(1) through (15). When a term is not defined in these paragraphs, it shall have the meaning given in paragraph (c) of this regulation; paragraph (b) of Regulation 61-62.5, Standard 7, "*Prevention of Significant Deterioration*" ("Standard 7"); or in the Clean Air Act.

(i) **Actuals PAL** for a major stationary source means a PAL based on the baseline actual emissions (as defined in paragraph (c)(1)) of all emissions units (as defined in paragraph (b)(20) of Standard 7) at the source, that emit or have the potential to emit the PAL pollutant.

(ii) **Allowable emissions** means "allowable emissions" as defined in paragraph (b)(3) of Standard 7, except as this definition is modified according to paragraphs (i)(2)(ii)(A) through (B).

(A) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(B) An emissions unit's potential to emit shall be determined using the definition in paragraph (b)(37) of Standard 7, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

(iii) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in paragraph (c)(14) or in the Clean Air Act, whichever is lower.

(iv) **Major emissions unit** means:

(A) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(B) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(v) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with paragraphs (i)(1) through (i)(15).

(vi) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(vii) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(viii) **PAL major modification** means, notwithstanding paragraphs (c)(6) and (8) (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(ix) **PAL permit** means the major NSR permit, the minor NSR permit, or the State operating permit under Regulation 61-62.1 Section II G, or the title V permit issued by the Department that establishes a PAL for a major stationary source.

(x) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

(xi) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in paragraph (c)(13) or in the Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in paragraph (i)(2)(iv).

(3) **Permit application requirements.** As part of a permit application requesting a PAL, the owner or

operator of a major stationary source shall submit the following information to the Department for approval:

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

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

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

(4) General requirements for establishing PALs.

(i) The Department is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs (i)(4)(i)(A) through (G) are met.

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

(B) The PAL shall be established in a PAL permit that meets the public participation requirements in paragraph (i)(5).

(C) The PAL permit shall contain all the requirements of paragraph (i)(7).

(D) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(E) Each PAL shall regulate emissions of only one pollutant.

(F) Each PAL shall have a PAL effective period of 10 years.

(G) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in paragraphs (i)(12) through (14) for each emissions unit under the PAL through the PAL effective period.

(ii) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under paragraph (d)(1)(c) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

(5) **Public participation requirement for PALs.** PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent paragraph (d)(6) and (d)(7). The Department must address all material comments before taking final action on the permit.

(6) **Setting the 10-year actuals PAL level.** (i) Except as provided in paragraph (i)(6)(ii), the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (c)(2)) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (c)(14) or under the Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(ii) For newly constructed units (which do not include modifications to existing units) on which operation began less than 24-months prior to the date of the PAL permit application, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(7) **Contents of the PAL permit.** The PAL permit must contain, at a minimum, the information in paragraphs (i)(7)(i) through (x).

(i) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(ii) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(iii) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with paragraph (i)(10) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Department.

(iv) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(v) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of paragraph (i)(9).

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

(vii) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under paragraph (i)(12).

(viii) A requirement to retain the records required under paragraph (i)(13) on site. Such records may

be retained in an electronic format.

(ix) A requirement to submit the reports required under paragraph (i)(14) by the required deadlines.

(x) Any other requirements that the Department deems necessary to implement and enforce the PAL.

(8) PAL effective period and reopening of the PAL permit. The requirements in paragraphs (i)(8)(i) and (ii) apply to actuals PALs.

(i) **PAL effective period.** The Department shall specify a PAL effective period of 10 years.

(ii) **Reopening of the PAL permit.**

(A) During the PAL effective period, the Department must reopen the PAL permit to:

(1) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(2) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under paragraph (d)(2).

(3) Revise the PAL to reflect an increase in the PAL as provided under paragraph (i)(11).

(B) The Department shall have discretion to reopen the PAL permit for the following:

(1) Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

(2) Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the Department may impose on the major stationary source under the State Implementation Plan.

(3) Reduce the PAL if the Department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

(C) Except for the permit reopening in paragraph (i)(8)(ii)(A)(1) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of paragraph (i)(5).

(9) Expiration of a PAL. Any PAL which is not renewed in accordance with the procedures in paragraph (i)(10) shall expire at the end of the PAL effective period, and the requirements in paragraphs (i)(9)(i) through (v) shall apply.

(i) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs (i)(9)(i)(A) through (B).

(A) Within the time frame specified for PAL renewals in paragraph (i)(10)(ii), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of

emissions units, if such a distribution is more appropriate as decided by the Department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (i)(10)(v), such distribution shall be made as if the PAL had been adjusted.

(B) The Department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.

(ii) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(iii) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (i)(9)(i)(A), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(iv) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in paragraph (c)(6).

(v) The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to paragraph (d)(2)(D), but were eliminated by the PAL in accordance with the provisions in paragraph (i)(1)(iii)(C).

(10) **Renewal of a PAL.**

(i) The Department shall follow the procedures specified in paragraph (i)(5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Department.

(ii) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the Department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(iii) **Application requirements.** The application to renew a PAL permit shall contain the information required in paragraphs (i)(10)(iii)(A) through (D).

(A) The information required in paragraphs (i)(3)(i) through (iii).

(B) A proposed PAL level.

(C) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(D) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the PAL.

(iv) **PAL adjustment.** In determining whether and how to adjust the PAL, the Department shall consider the options outlined in paragraphs (i)(10)(iv)(A) and (B). However, in no case may any such adjustment fail to comply with paragraph (i)(10)(iv)(C).

(A) If the emissions level calculated in accordance with paragraph (i)(6) is equal to or greater than 80 percent of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in paragraph (i)(10)(iv)(B); or

(B) The Department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale.

(C) Notwithstanding paragraphs (i)(10)(iv)(A) and (B),

(1) If the potential to emit of the major stationary source is less than the PAL, the Department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(2) The Department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of paragraph (i)(11) (increasing a PAL).

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

(11) Increasing a PAL during the PAL effective period.

(i) The Department may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (i)(11)(i)(A) through (D).

(A) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(B) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that

emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

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

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

(ii) The Department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph (i)(11)(i)(B)), plus the sum of the baseline actual emissions of the small emissions units.

(iii) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of paragraph (i)(5).

(12) Monitoring requirements for PALs.

(i) General Requirements.

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

(B) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs (i)(12)(ii)(A) through (D) and must be approved by the Department.

(C) Notwithstanding paragraph (i)(12)(i)(B), you may also employ an alternative monitoring approach that meets paragraph (i)(12)(i)(A) if approved by the Department.

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

(ii) Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (i)(12)(iii) through (ix):

(A) Mass balance calculations for activities using coatings or solvents;

(B) Continuous emissions monitoring system (CEMS);

(C) Continuous parameter monitoring system (CPMS) or Predictive emissions monitoring system

(PEMS); and

(D) Emission Factors.

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

(A) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(B) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(C) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(iv) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(B) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(v) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(A) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(B) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.

(vi) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(A) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(B) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(C) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines that testing is not required.

(vii) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(viii) Notwithstanding the requirements in paragraphs (i)(12)(iii) through (vii), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:

(A) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(B) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(ix) Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Department. Such testing must occur at least once every 5 years after issuance of the PAL.

(13) Recordkeeping requirements.

(i) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of paragraph (i) and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(ii) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(A) A copy of the PAL permit application and any applications for revisions to the PAL; and

(B) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

(14) Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable title V operating permit program. The reports shall meet the requirements in paragraphs (i)(14)(i) through (iii).

(i) Semi-Annual Report. The semi-annual report shall be submitted to the Department within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs (i)(14)(i)(A) through (G).

(A) The identification of owner and operator and the permit number.

(B) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (i)(13)(i).

(C) All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(E) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(F) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph (i)(12)(vii).

(G) A signed statement by the responsible official (as defined by Regulation 61-62.70, *Title V Operating Permit Program*) certifying the truth, accuracy, and completeness of the information provided in the report.

(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(A) The identification of owner and operator and the permit number;

(B) The PAL requirement that experienced the deviation or that was exceeded;

(C) Emissions resulting from the deviation or the exceedance; and

(D) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(iii) Re-validation results. The owner or operator shall submit to the Department the results of any re-validation test or method within 3 months after completion of such test or method.

(15) Transition requirements.

(i) The Department may not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) after the date these provisions become effective.

(ii) The Department may supersede any PAL which was established prior to the date of approval of the plan by the Administrator with a PAL that complies with the requirements of paragraphs (i)(1) through (15).

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

R. 61-62.5, Standard No. 7 History - *South Carolina State Register*:
Vol. 29, Issue No. 6. (Doc. No. 2943), June 24, 2005;
Vol. 33, Issue No. 4, (Doc. No. 4056), April 24, 2009.

Appendix A

Notice of Drafting, Notice of Proposed Regulation, And Staff Informational Forum Sign-In Sheet and Transcript

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DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control is proposing to amend Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR) and the South Carolina Air Quality Implementation Plan (State Implementation Plan or SIP). This notice is being published to renew the revisions previously established by the September 26, 2008, Notice of Drafting published in Volume 32, Issue 9 of the South Carolina State Register, and to initiate the promulgation process to amend a different part of the same regulation. Interested persons are invited to present their views concerning these amendments in writing to Alan Hancock, Regulation and SIP Management Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, via electronic mail at hancocam@dhec.sc.gov, or via facsimile at (803) 898-4117. To be considered, the Department must receive comments by August 23, 2010, the close of the drafting comment period.

Synopsis:

On November 29, 2005, the EPA issued a final rule in the Federal Register entitled Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard [70 FR 71612], also known as the “Phase 2 Ozone Rule,” which finalized regulations to implement the 8-hour ground-level ozone National Ambient Air Quality Standard that the EPA established in July 1997. The Department has implemented all required elements of this rule but will clarify a footnote to the Prevention of Significant Deterioration (PSD) regulations to list nitrogen oxide (NO_x) as a precursor to ozone.

On April 25, 2008, the Department published a Notice of Drafting in the South Carolina State Register to initiate revisions to Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR) and the SIP, in order to comply with a final rule entitled Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements [72 FR 32526], published in the Federal Register on June 13, 2007.

On May 16, 2008, the EPA published a final rule in the Federal Register entitled Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) [73 FR 28321], also known as the “NSR PM_{2.5} Implementation Rule,” which finalized regulations to implement the New Source Review program for fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as “PM_{2.5}”). The NSR PM_{2.5} Implementation Rule became effective July 15, 2008, and required states with SIP-approved PSD programs, of which South Carolina is one, to submit revised PSD programs within a 3 year transition period following the date of its publication, or by May 16, 2011. The NSR PM_{2.5} Implementation Rule included a major source threshold, significant emissions rates for direct PM_{2.5} and its presumed precursors, sulfur dioxide (SO₂) and NO_x; offset ratios for PM_{2.5}; and interpollutant trading for offsets and applicability of NSR to PM_{2.5} precursors. The NSR PM_{2.5} Implementation Rule also continued the EPA’s policy of allowing SIP-approved states to use PM₁₀ (that is, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) as a surrogate for PM_{2.5} in meeting the NSR requirements of the Clean Air Act, until the end of the 3 year transition period (“EPA PM₁₀ Surrogate Policy”).

On September 26, 2008, the Department published a second Notice of Drafting in the South Carolina State Register for the revisions to Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR) and the SIP. This second notice incorporated, among other things, the NSR PM_{2.5} Implementation Rule.

12 DRAFTING NOTICES

On April 24, 2009, the Department published a Notice of Final Regulation in the South Carolina State Register to complete the regulation development process initiated by the aforementioned Notices, except for the revisions required to incorporate the NSR PM_{2.5} Implementation Rule. The Department elected to delay these revisions for the NSR PM_{2.5} Implementation Rule, pending further guidance from the EPA, which the EPA plans to release in summer 2010.

On February 11, 2010, the EPA published a proposed rule in the Federal Register entitled Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}); Notice of Proposed Rulemaking To Repeal Grandfathering Provision and End the PM₁₀ Surrogate Policy [75 FR 6827]. In this action, the EPA proposed to end the EPA PM₁₀ Surrogate Policy in SIP-approved states before the end of the 3 year transition period. The EPA also sought comment on whether the technical issues that led to the EPA PM₁₀ Surrogate Policy have been resolved, and on the transition process, should the EPA decide to end the EPA PM₁₀ Surrogate Policy. The Department will continue to rely upon the EPA PM₁₀ Surrogate Policy in issuing PSD permits until the EPA finalizes all of the necessary tools and guidance.

Based on the requirements of the Phase 2 Ozone Rule [70 FR 71612] and the NSR PM_{2.5} Implementation Rule [73 FR 28321], the Department proposes to amend Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR) and the SIP to incorporate the provisions of the Phase 2 Ozone Rule and the NSR PM_{2.5} Implementation Rule. The Department action on this proposal may be delayed until final guidance is provided by the EPA. The Department may also propose typographical corrections and clarifications to Regulation 61-62.5, Standard No. 7 and Standard No. 7.1, as necessary. Pursuant to the Phase 2 Ozone Rule [70 FR 71612] and the NSR PM_{2.5} Implementation Rule [73 FR 28321], the proposed changes are federally mandated; therefore, pursuant to S.C. Code Ann. Section 1-23-120(H)(1), General Assembly review is not required.

DEPARTMENT OF NATURAL RESOURCES

CHAPTER 123

Statutory Authority: 1976 Code Section 50-11-2200

Notice of Drafting:

The Department of Natural Resources proposes to amend Regulation 123-40, "Hunt Units and Wildlife Management Area Regulations" and Regulation 123-51, "Turkey Hunting Rules and Seasons". The subject of the proposed action is to amend the regulations to modify existing seasons and methods and add new wildlife management areas to allow additional hunting opportunity. Any person interested may submit written comments to Breck Carmichael, Deputy Director, Wildlife & Freshwater Fisheries Division, S.C. Department of Natural Resources, Post Office Box 167, Columbia, SC 29202.

Synopsis:

These amended regulations will allow the expansion of existing seasons and methods within the current season framework to allow additional opportunity on existing and new Wildlife Management Areas. These regulations set seasons, bag limits, and methods of hunting and taking of wildlife and other restrictions on Wildlife Management Areas.

Notice of Proposed Regulation: November 26, 2010

20 PROPOSED REGULATIONS

DETERMINATION OF COSTS AND BENEFITS:

There will be no additional cost incurred by the State or its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning these regulations.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

These regulations will have no direct effect on the environment. The public health and the business environment of this State will be enhanced by conforming the regulations to the statute.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There will be no direct detrimental effect on the environment and public health of this State if the regulations are not implemented in this State. The conflicts between statute and regulation may have a detrimental effect on the business environment.

Statement of Rationale:

The regulations are amended to conform to 2008 Act 223.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 4160
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62.5. Standard No. 7, Prevention of Significant Deterioration
61-62.5. Standard No. 7.1, Nonattainment New Source Review (NSR)
61-62. Air Pollution Control Regulations and Standards

Preamble:

On November 29, 2005, the United States Environmental Protection Agency (EPA) issued a final rule in the Federal Register entitled Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard [70 FR 71612], also known as the "Phase 2 Ozone Rule," which finalized regulations to implement the 8-hour ground-level ozone National Ambient Air Quality Standard that the EPA established in July 1997. The Department has implemented all required elements of this rule but the EPA has identified that the language within a footnote to the South Carolina Prevention of Significant Deterioration (PSD) regulations listing nitrogen oxides (NO_x) as a precursor to ozone does not mirror the federal language. As such, the EPA has requested that the Department clarify this issue by adopting the federal language verbatim.

On April 25, 2008, the Department published a Notice of Drafting in the State Register to initiate revisions to Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), and the SIP, in order to comply with a final rule entitled

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements [72 FR 32526], published in the Federal Register on June 13, 2007.

On May 16, 2008, the EPA published a final rule in the Federal Register entitled Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) [73 FR 28321], also known as the “NSR PM_{2.5} Implementation Rule,” which finalized regulations to implement the NSR program for fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as “PM_{2.5}”). The NSR PM_{2.5} Implementation Rule became effective July 15, 2008, and required states with SIP-approved PSD programs, of which South Carolina is one, to submit revised PSD programs within a 3 year transition period following the date of its publication, or by May 16, 2011. The NSR PM_{2.5} Implementation Rule included a major source threshold, significant emissions rates for direct PM_{2.5} and its presumed precursors, sulfur dioxide (SO₂) and NO_x, offset ratios for PM_{2.5}, and interpollutant trading for offsets and applicability of NSR to PM_{2.5} precursors. The NSR PM_{2.5} Implementation Rule also continued the EPA’s policy of allowing SIP-approved states to use PM₁₀ (that is, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) as a surrogate for PM_{2.5} in meeting the NSR requirements of the Clean Air Act until the end of the 3 year transition period (“EPA PM₁₀ Surrogate Policy”).

On September 26, 2008, the Department published a second Notice of Drafting in the State Register for the revisions to R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR) and the SIP. This second notice incorporated, among other things, the NSR PM_{2.5} Implementation Rule.

On April 24, 2009, the Department published a Notice of Final Regulation in the State Register to complete the regulation development process initiated by the aforementioned Notices, except for the revisions required to incorporate the NSR PM_{2.5} Implementation Rule. The Department elected to delay these revisions for the NSR PM_{2.5} Implementation Rule, pending further guidance from the EPA, which the EPA plans to release in summer 2010.

The Department proposes to amend R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR) and the SIP to incorporate the provisions of the Phase 2 Ozone Rule and the NSR PM_{2.5} Implementation Rule, and to add a nonsubstantive clarification to correct a scrivener’s error.

A Notice of Drafting was published in the State Register, on the Bureau of Air Quality Regulation and SIP Management website, and in the DHEC Regulation Development Update on July 23, 2010. No comments were received. Since this amendment is consistent with federal law, neither a preliminary fiscal impact statement nor a preliminary assessment report is required.

Section-by-Section Discussion of Proposed Revisions:

SECTION CITATION/EXPLANATION OF CHANGE:

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (b) Definitions, (44) “Regulated NSR Pollutant”:

The definition of “Regulated NSR Pollutant” is revised to include elaboration on which pollutants are precursors for criteria pollutants under the National Ambient Air Quality Standards, and specific instructions on how to calculate PM emissions when determining if emissions fall within the scope of this definition.

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (b) Definitions, (49)(i) “Significant”:

The definition of “Significant” is revised to include new thresholds for PM_{2.5}.

22 PROPOSED REGULATIONS

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (i) Exemptions, (5)(i):

This item is modified by adding “or nitrogen oxides” to the footnote for Ozone in the list of de minimis air quality levels, so that a facility with a net increase of 100 tons per year or more of nitrogen oxides subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (i) Exemptions, (5)(ii):

This item is modified by changing the paragraph reference from “paragraph (i)(8)(i)” to “paragraph (i)(5)(i),” to follow a change in codification in 40 CFR 51.166.

Regulation, 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR)

Regulation, 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), (c) Definitions, (13) “Regulated NSR pollutant”:

The definition of “Regulated NSR pollutant” is modified in the introductory sentence by adding the words “of this regulation” for clarification to correct a nonsubstantive scrivener’s error. The definition is also modified by adding a list of precursors and the requirements for considering PM, including timing requirements for considering condensable emissions.

Regulation, 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), (c) Definitions, (14) “Significant”:

The definition of “Significant” is revised to include new thresholds for PM_{2.5}.

Notice of Staff Informational Forum and Public Comment Period:

Staff of the South Carolina Department of Health and Environmental Control invites interested members of the public to attend a staff-conducted informational forum to be held on December 29, 2010, at 10:00 a.m. in the Wallace Room (3141) at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The purpose of the forum is to answer questions, clarify any issues, and receive comments from interested persons on the proposed amendments to R.61-62, Air Pollution Control Regulations and Standards, and the SIP. Please use the Bull Street entrance.

Interested persons are also provided an opportunity to submit written comments to Alan Hancock by mail at the Bureau of Air Quality, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201; by facsimile at (803) 898-4117; or by e-mail at hancocam@dhec.sc.gov. To be considered, comments must be received no later than 5:00 p.m. on December 29, 2010, the close of the comment period. Comments received at the forum or during the write-in public comment period by the deadline requested above shall be submitted to the Board in a Summary of Public Comments and Department Responses for consideration at the public hearing as noticed below.

Copies of the proposed regulation for public notice and comment may be obtained by contacting Alan Hancock at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201; by calling (803) 898-4139; or by emailing hancocam@dhec.sc.gov. A copy may also be obtained on the Department’s Regulatory Information Internet Site at <http://www.scdhec.gov/administration/regs/> in its DHEC Regulation Development Update. To access this document, click on the Air category, then scan down for this proposed amendment.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to comment on the proposed amendments to R.61-62, Air Pollution Control Regulations and Standards, and the SIP at a public hearing to be conducted by the Board of the South Carolina Department of Health and Environmental Control at its regularly-scheduled meeting on February 10, 2011. The public hearing is to be held in room 3420 (Board

Room) of the Commissioner’s Suite, third floor, Aycock Building of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board’s agenda to be published by the Department twenty-four hours in advance of the meeting at the following address: <http://www.scdhec.gov/administration/board-agenda.htm>. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation to the Clerk of the Board for inclusion for the record.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Purpose: The Department proposes to amend R.61-62.5, Standard No. 7, Prevention of Significant Deterioration; R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and the SIP to incorporate the provisions of the Phase 2 Ozone Rule and the NSR PM_{2.5} Implementation Rule, and to add a nonsubstantive clarification to correct a scrivener’s error.

Legal Authority: The legal authority for R.61-62, Air Pollution Control Regulations and Standards, is S.C. Code Section 48-1-10 et seq.

Plan for Implementation: The proposed amendments will take effect upon approval by the Board of Health and Environmental Control and publication in the State Register. The proposed amendments will be implemented by providing the regulated community with copies of the regulation, and sending an email to stakeholders.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The EPA regularly promulgates amendments to federal regulations to include clarification, guidance, technical amendments, and strengthen air quality provisions. States are mandated by law to adopt these federal amendments. These amendments are reasonable as they promote consistency and ensure conformity of state regulations to federal requirements.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the state or its political subdivisions as a result of these amendments. The standards to be adopted are already effective and applicable to the regulated community as a matter of federal law. The proposed amendments will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the proposed amendments to R. 61-62, Air Pollution Control Regulations and Standards, and the SIP will provide continued protection of the environment and public health.

24 PROPOSED REGULATIONS

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

The state's authority to implement federal requirements, which are beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 4161
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-68. Water Classifications and Standards

Preamble:

The Department proposes to amend R.61-68 to strengthen and improve the existing regulation and make appropriate revisions of the State's water quality standards in accordance with Section 303(c)(2)(B) of the Federal Clean Water Act (CWA). Section 303(c)(2)(B) requires that South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years for the purposes of considering the Environmental Protection Agency's (EPA) most recently published numeric and narrative criteria and to comply with recent Federal regulatory revisions and recommendations. The Department proposes revisions to update numeric criteria, to remove fecal coliform (FC) as a bacterial indicator for recreational uses in specific marine waters of the State while continuing to protect existing shellfish harvesting uses in those waters, to make the regulation consistent with recent changes to the S.C. Pollution Control Act (PCA), and revisions associated with corrections or clarifications for language in the current regulation. See also the Statement of Need and Reasonableness and Statement of Rationale herein. The proposed amendments will be submitted to the General Assembly for review.

A first Notice of Drafting was published in the *State Register* on March 26, 2010 and a second Notice of Drafting with one additional issue was published in the *State Register* on April 23, 2010. Both notices were placed on the Department's water quality standards webpage and circulated to stakeholders and other interested parties. Comments were received and used in the drafting of the proposed regulation.

Section-by-Section Discussion of Proposed Changes:

R.61-68, Water Classifications and Standards

(1) Revision of Federal toxics criteria to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

Section Citation and Explanation of Change

R.61-68. Appendix - Amendment of the Priority Toxic Pollutants Chart to revise criteria for the following pollutants: acrolein, arsenic, and phenol to reflect EPA's most recent recommendations and to add a footnote.

Staff Information Forum Sign-In Sheet

Sign-In Sheet For Public Hearing

NOTICE TO AMEND REGULATION 61-62, AIR POLLUTION CONTROL REGULATIONS AND STANDARDS AND THE AIR QUALITY STATE IMPLEMENTATION PLAN December 29, 2010

Synopsis: The Department proposes to amend R. 61-62.5, Standard No. 7, Prevention of Significant Deterioration; R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and the SIP to incorporate the provisions of the federal rule entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard" (70 FR 71612) also known as the "Phase 2 Ozone Rule," and the federal rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})" (73 FR 28321), also known as the "NSR PM_{2.5} Implementation Rule NSR PM_{2.5} Implementation Rule." The Department also proposed to add a nonsubstantive clarification to correct a scrivener's error.

Pursuant to the Clean Air Act, U.S.C. § 7401(k)(5) *et seq.*, and the aforementioned *Federal Register* Notices, the changes are Federally mandated, therefore pursuant to S.C. Code Ann. § 1-23-120(H)(1), General Assembly review is not required

Name / Representing	Mailing Address	Telephone Number & Email Address
Mallon McAllister DHEC	2600 Bull St.	mcallimk@dhec.sc.gov
ALAN HANCOCK DHEC	2600 BULL ST. COLUMBIA SC 29201	(803) 898-4139 HANCOCKAM@DHEC.SC.GOV

Transcript of Staff Informational Forum: December 29, 2010

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) BOARD OF HEALTH AND
COUNTY OF RICHLAND) ENVIRONMENTAL CONTROL

INFORMATIONAL FORUM:)
)
PROPOSED REVISION TO)
REGULATION 61-62.5, STANDARD)
NO. 7, PREVENTION OF)
SIGNIFICANT DETERIORATION;) TRANSCRIPT OF
R.61-62.5, STANDARD NO. 7.1,)
NONATTAINMENT NEW SOURCE) PROCEEDINGS
REVIEW (NSR); AND THE SOUTH)
CAROLINA AIR QUALITY)
IMPLEMENTATION PLAN)
)
STATE REGISTER DOCUMENT)
)

Informational Forum held at the South Carolina Department of Health and Environmental Control, before Facilitator Alan Hancock in the Wallace Room, 2600 Bull Street, Columbia, South Carolina, on Wednesday, December 29, 2010, commencing at 10:13 o'clock, A.M. and ending at 10:20 o'clock, A.M., in the above-entitled matter, taken before Faye A. Grainger, Certified Court Reporter.

FAYE A. GRAINGER, d/b/a
GRAINGER REPORTING SERVICE
Post Office Box 532
Irmo, South Carolina 29063
(803) 798-2679 fayegrainger@bellsouth.net

A P P E A R A N C E S:

DHEC Staff Present:

Alan Hancock, Facilitator

Malleri McAllister

Faye A. Grainger
Court Reporter

Grainger Reporting Service
(803) 798-2679

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P R O C E E D I N G

FACILITATOR HANCOCK: Good morning,
my name is Alan Hancock with the Bureau of
Air Quality. I will be the facilitator
for this forum. Let the record show that
this forum was convened at 10:13 a.m. on
Wednesday, December 29th, 2010 in the duly
announced location. Public notice of this
hearing was published in the State
Register on Friday, November 26th, 2010.
Copies of the notice were also sent to a
list of interested parties maintained by
the Bureau. Unless I hear an objection, a
copy of this notice will be entered into
public record as though it were read.

Let the record reflect that the forum
today is being conducted by the South
Carolina Department of Health and
Environmental Control, or the Department.
The purpose of this hearing is to answer
questions, clarify issues, and receive
input from interested persons on proposed
revisions to Regulation 61-62, Air
Pollution Control Regulations and

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1 Standards and the South Carolina Air
2 Quality Implementation Plan, also referred
3 to as the State Implementation Plan or
4 SIP. Comments received today shall be
5 considered by the Department in preparing
6 a final Regulation revision and State
7 Implementation Plan revision.

8 I will present a brief summary and
9 explanation of the proposed plan.

10 Following the presentation, any member of
11 the audience desiring to make comments
12 will be given an opportunity to do so.
13 Speakers will be recognized in the order
14 in which they are registered.

15 If there are any questions after the
16 presentation, please direct them to me and
17 I will either answer them or ask the
18 appropriate person to respond. If no one
19 is able to answer the question today, an
20 answer will be provided in writing at a
21 later date.

22 On November 29, 2005, the EPA issued
23 a final rule in the Federal Register
24 entitled "Final Rule to Implement the 8-
25 Hour Ozone National Ambient Air Quality

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1 Standard" 70 FR 71612, also known as the
2 "Phase 2 Ozone Rule", which finalized
3 regulations to implement the 8-hour
4 ground-level ozone National Ambient Air
5 Quality Standard that the EPA established
6 in July, 1997. The Department has
7 implemented all required elements of this
8 rule but the EPA has identified that the
9 language within a footnote to the South
10 Carolina Prevention of Significant
11 Deterioration or PSD regulations listing
12 nitrogen oxides or NOx as a precursor to
13 ozone does not mirror the federal
14 language. As such, the EPA has requested
15 that the Department clarify this issue by
16 adopting the federal language verbatim.

17 On April 25, 2008, the Department
18 published a Notice of Drafting in the
19 State Register to initiate revisions to
20 Regulation 61-62.5, Standard No. 7,
21 Prevention of Significant Deterioration,
22 Regulation 61-62.5, Standard No. 7.1,
23 Nonattainment New Source Review or NSR,
24 and the SIP, in order to comply with a
25 final rule entitled Prevention of

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Significant Deterioration or PSD and Nonattainment New Source Review or NSR; Removal of Vacated Elements, 72 FR 32526, published in the Federal Register on June 13th, 2007.

On May 16th, 2008, the EPA published a final rule in the Federal Register entitled "Implementation of the New Source Review or NSR Program for Particulate Matter Less Than 2.5 Micrometers" or PM 2.5, 73 FR 28321, also known as the "NSR PM 2.5 Implementation Rule," which finalized regulations to implement the NSR program for fine particulate matter; that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as "PM 2.5". The NSR PM 2.5 Implementation Rule became effective July 15th, 2008, and required states with SIP-approved PSD programs, of which South Carolina is one, to submit revised PSD programs within a three year transition period following the date of its publication, or by May 16th, 2011. The NSR PM 2.5 Implementation Rule

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1 included a major source threshold,
2 significant emissions rates for direct PM
3 2.5 and its presumed precursors, sulfur
4 dioxide or SO2 and NOx, offset ratios for
5 PM 2.5, and interpollutant trading for
6 offsets and the applicability of NSR to PM
7 2.5 precursors. The NSR PM 2.5
8 Implementation Rule also continued the
9 EPA's policy of allowing SIP-approved
10 states to use PM 10; that is, particles
11 with an aerodynamic diameter less than or
12 equal to a nominal ten micrometers as a
13 surrogate for PM 2.5 in meeting the NSR
14 requirements of the Clean Air Act until
15 the end of the three year transition
16 period, also known as the "EPA PM 10
17 Surrogate Policy".

18 On September 26th, 2008, the
19 Department published a second Notice of
20 Drafting in the State Register for the
21 revisions to Regulation 61-62.5, Standard
22 No. 7, Prevention of Significant
23 Deterioration, Regulation 61-62.5, the
24 Standard No. 7.1, Nonattainment New Source
25 Review or NSR, and the SIP. This second

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1 notice incorporated, among other things,
2 the NSR PM 2.5 Implementation Rule.

3 On April 24th, 2009, the Department
4 published a Notice of Final Regulation in
5 the State Register to complete the
6 regulation development process initiated
7 by the aforementioned Notices, except for
8 the revisions required to incorporate the
9 NSR PM 2.5 Implementation Rule. The
10 Department elected to delay these
11 revisions for the NSR PM 2.5
12 Implementation Rule, pending further
13 guidance from the EPA.

14 The Department proposes to amend
15 Regulation 61-62.5, Standard No. 7,
16 Prevention of Significant Deterioration,
17 Regulation 61-62.5, Standard No. 7.1,
18 Nonattainment New Source Review or NSR,
19 and the SIP to incorporate the provisions
20 of the Phase 2 Ozone Rule and the NSR PM
21 2.5 Implementation Rule. The Department
22 also proposes to add a nonsubstantive
23 clarification to correct a scrivener's
24 error.

25 Pursuant to the Phase 2 Ozone Rule,

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1 70 FR 71612 and the NSR PM 2.5
2 Implementation Rule, 73 FR 28321, the
3 proposed changes are federally mandated;
4 therefore, pursuant to South Carolina Code
5 Annotated Section 1-23-120(H)(1), General
6 Assembly review is not required.

7 The Department published a Notice of
8 Drafting in the State Register on July
9 23rd, 2010, to initiate the statutory
10 process to amend Regulation 61-62 to
11 incorporate the aforementioned revisions.
12 The Department also published the Notice
13 on the Department's web site. No comments
14 were received. Since this amendment is
15 consistent with federal law, neither a
16 preliminary fiscal impact statement nor a
17 preliminary assessment report is required.

18 At this point, I will recognize
19 anyone who wishes to comment on the
20 proposed revisions.

21 I would like to remind you that any
22 comments received will be entered into the
23 official transcript of this forum and
24 submitted to the EPA for review and
25 approval. Additionally, comments deemed

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1 significant by the Department may be used
2 to modify the Regulations and SIP as
3 necessary. Are there any comments for the
4 record?

5 There being no comments, this forum
6 is adjourned. Thank you for your
7 attendance and participation here today.

8 Thereupon, at 10:20 a.m. on the same
9 day, the forum was concluded.

10
11 (Thereupon, at 10:20 o'clock, A.M.,
12 the same day, the proceedings were
13 concluded)

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Appendix B

Board Public Hearing Transcript, and Notice of Final Regulation

Board Public Hearing Transcript: February 10, 2011.....3
Notice of Final Regulation: February 25, 201115

Board Public Hearing Transcript: February 10, 2011

1 SOUTH CAROLINA BOARD OF HEALTH AND

2
3 ENVIRONMENTAL CONTROL4
5 BOARD MEETING, FEBRUARY 10, 2011
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9

10 This meeting, held on February 10, 2011, a portion
11 of which was reported by Lisa F. Huffman, Verbatim Court
12 Reporter and Notary Public in and for the State of South
13 Carolina; said meeting being held at the Boardroom of
14 S.C. Department of Health and Environmental Control,
15 2600 Bull Street, Columbia, South Carolina, is being
16 held pursuant to notice and in accordance with the South
17 Carolina Rules, at the Offices of DHEC, on Thursday, the
18 10th day of November, 2011, scheduled for 10:00 a.m.,
19 and commencing at the hour of 10:00 a.m., the reported
20 portion of which began at 10:12 a.m.

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803-256-4500

APPEARANCES

1

2

3 BOARD MEMBERS: Chairman: Paul C. Aughtry, III

4 Secretary: Steven G. Kisner

5 C. Earl Hunter, Commissioner

6 Coleman Buckhouse, M.D.

7 Henry C. Scott

8 M. David Mitchell, M.D.

9

OFFICE OF GENERAL

10 COUNSEL: Carl Roberts, Esquire

11 CLERK: Lisa Lucas Longshore

12

13 ALSO PRESENT: Staff member:

14 Robbie Brown

15

16 Interested members of the public.

17 * * * * *

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ATTACHMENTS:

Sign-in Sheet for Public Hearing on Proposed Amendments To Regulation 61-62, Air Pollution Control Regulations and Standards, And the Air Quality State Implementation Plan, State Register Document No. 4160

* * * * *

P R O C E E D I N G S

1
2 MR. CHAIRMAN: We will now have public
3 hearings pursuant to Code Section 1-23-111. Notice
4 of these hearings was published in The State
5 Register. The following procedures will be used
6 for the hearings. A member of the DHEC staff will
7 describe the proposal. At the conclusion of that
8 presentation, any member of the public may comment.
9 I will first call on those who have signed up to
10 speak.

11 At the conclusion of their comments, there
12 will be an opportunity for any other member of the
13 public to speak. Please limit your comments to
14 five minutes. And if several members of a group
15 are present, please appoint a spokesperson for that
16 group. Please limit your comments to material
17 which is relevant and is not repetitive of
18 statements already made. Please state your name
19 and organization for the court reporter. If you
20 have a written statement, please provide a copy to
21 the reporter.

22 Item No. 8 is Proposed Amendments of
23 Regulation 61-62, Air Pollution Control Regulations
24 and Standards. Staff presentation will be by
25 Robbie Brown.

1 MR. BROWN: Good morning, Mr. Chairman,
2 members of the board, Commissioner Hunter. This is
3 a request for a public hearing and a finding of
4 need and reasonableness to amend Regulation 61-62,
5 Standards No. 7 and 7.1 and the South Carolina
6 State Implementation Plan. These revisions are
7 being promulgated to update our regulations for
8 consistency with federal requirements. And as
9 such, these revisions do not require legislative
10 review.

11 Specifically, the department is proposing to
12 amend Regulation 61-62.5, Standard No. 7, which is
13 the "Prevention of Significant Deterioration," and
14 Standard No. 7.1, "Nonattainment New Source
15 Review," and also the SIP, to incorporate provision
16 of federal new source review PM 2.5, with
17 implementation rules. These rules define how to
18 address PM 2.5 in a major construction permit
19 application review. The department also proposes
20 to adopt federal language for a footnote in
21 Standard No. 7 regarding ozone precursors in order
22 to maintain full approval of the PSD program. And
23 lastly, to add a non-substantive clarification to
24 correct a scrivener's error.

25 The EPA has proposed ending the use of Pm 10

1 Surrogacy Policy. And this policy has allowed the
2 use of PM 10 review to serve as the PM 2.5 review
3 until the EPA issued all their implementation
4 rules. To expedite the EPA's rules of these
5 changes, we requested parallel processing of our
6 regulation proposal. And the EPA's comments have
7 been incorporated into the proposed regulations you
8 have been provided.

9 A notice of drafting was published in The
10 State Register on July the 23rd, 2010. No comments
11 were received during the comment period. On
12 November 10th, 2010, the board granted staff
13 initial approval to public notice of proposed
14 amendments and to conduct a staff informational
15 forum. On December 29th, 2010, a staff
16 informational forum was held. And no comments were
17 received during the public notice period or at the
18 forum. The department staff recommends that after
19 public hearing and consideration of the attached
20 information, the board finds for the need and
21 reasonableness of the proposed revisions.

22 Thank you. And I'll be glad to answer any
23 questions.

24 MR. CHAIRMAN: Thank you, Robbie. Lisa, has
25 anybody signed up to speak?

1 MR. ROBERTS: Mr. Chairman, no one has signed
2 to speak on this one.

3 MR. CHAIRMAN: Okay. Thank you. Is there
4 anybody present who would like to speak? Are there
5 any questions? Excuse me?

6 MR. HUNTER: I was just saying, no one's
7 stepping forward.

8 MR. CHAIRMAN: Good. That's a good number.
9 Are there any questions from the board of Mr.
10 Brown? Any comments? Hearing none, is there a
11 motion to accept the recommendation?

12 MS. BUCKHOUSE: I so move.

13 MR. CHAIRMAN: Is there a second?

14 MR. SCOTT: Second.

15 MR. CHAIRMAN: Further discussion? All in
16 favor?

17 BOARD MEMBERS: Aye.

18 MR. CHAIRMAN: Motion carries. Thank you very
19 much, Mr. Brown.

20 (The reported portion of the hearing was
21 concluded at 10:16 a.m.)
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1 CERTIFICATE OF REPORTER

2 I, Lisa F. Huffman, Verbatim Court Reporter and
3 Notary Public in and for the State of South Carolina at
4 Large, hereby certify that I reported the Hearing of the
5 Board for the Department of Health and Environmental
6 Control, held on the 10th day of February, 2011; and
7 that the foregoing pages constitute a true and correct
8 transcription of my report of said proceedings.

9 I further certify that I am neither attorney nor
10 counsel for, nor related to or employed by any of the
11 parties connected with this action, nor am I financially
12 interested in said cause.

13 I further certify that the original of said
14 transcript was thereafter sealed and delivered to LISA
15 LONGSHORE, Clerk for the Board, Department of Health and
16 Environmental Control, 2600 Bull Street, Columbia, South
17 Carolina 29201, who will retain this sealed original
18 transcript and shall be responsible for filing same with
19 the court prior to trial or any hearing which might
20 result.

21 In witness whereof, I have set my hand and seal
22 this 25th day of February, 2011.

23 

24 Lisa F. Huffman

25 My Commission expires 7/11/15

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		<p style="text-align: center;">I</p> <p>III 2:3 implementation 3:20 5:6,17 6:3 incorporate 5:15 incorporated 6:7 Index 3:9 information 6:20 informational 6:14,16 initial 6:13 interested 2:19 8:12 issued 6:3 Item 4:22</p>	<p style="text-align: center;">O</p> <p>O 4:1 OFFICE 2:10</p>	<p style="text-align: center;">R</p>

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#8

Sign-In Sheet for Public Hearing

PROPOSED AMENDMENTS TO REGULATION 61-62, *AIR POLLUTION CONTROL REGULATIONS AND STANDARDS*, AND THE AIR QUALITY STATE IMPLEMENTATION PLAN
Doc. No 4160

February 10, 2011

Synopsis: The Department proposes to amend R. 61-62.5, Standard No. 7, Prevention of Significant Deterioration; R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and the SIP to incorporate the provisions of the federal rule entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard" (70 FR 71612) also known as the "Phase 2 Ozone Rule," and the federal rule entitled "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})" (73 FR 28321), also known as the "NSR PM_{2.5} Implementation Rule NSR PM_{2.5} Implementation Rule." The Department also proposes to add a nonsubstantive clarification to correct a scrivener's error.

These amendments will not require Legislative review.

Name / Representing	Mailing Address	Telephone Number & Email Address

Notice of Final Regulation: February 25, 2011

26 FINAL REGULATIONS

Document No. 4160
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards

61-62.5. Standard No. 7, Prevention of Significant Deterioration

61-62.5. Standard No. 7.1, Nonattainment New Source Review (NSR)

Synopsis:

The Department has amended R. 61-62.5, Standard No. 7, Prevention of Significant Deterioration; R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and the SIP to incorporate the provisions of the federal rule entitled “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard” (70 FR 71612) also known as the “Phase 2 Ozone Rule,” and the federal rule entitled “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (73 FR 28321), also known as the “NSR PM_{2.5} Implementation Rule NSR PM_{2.5} Implementation Rule.” The Department also added a nonsubstantive clarification to correct a scrivener’s error.

These regulations were promulgated to comply with federal law. A fiscal impact statement, assessment report, or legislative review are not required.

A Notice of Drafting for these proposed regulations was published in the *State Register* on July 23, 2010.

Discussion of Revisions:

SECTION CITATION/EXPLANATION OF CHANGE:

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (b) Definitions, (44) “Regulated NSR Pollutant”:

The definition of “Regulated NSR Pollutant” was revised to include elaboration on which pollutants are precursors for criteria pollutants under the National Ambient Air Quality Standards, and specific instructions on how to calculate PM emissions when determining if emissions fall within the scope of this definition.

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (b) Definitions, (49)(i) “Significant”:

The definition of “Significant” was revised to include new thresholds for PM_{2.5}.

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (i) Exemptions, (1)(xi):

This item was added to clarify what provisions apply to PSD applications received before July 15, 2008.

Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration, (i) Exemptions, (5)(i):

This item was modified by adding “or nitrogen oxides” to the footnote for Ozone in the list of de minimis air quality levels, so that a facility with a net increase of 100 tons per year or more of nitrogen oxides subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

Regulation, 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR)

Regulation, 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), (c) Definitions, (13) “Regulated NSR pollutant”:

The definition of “Regulated NSR pollutant” was modified in the introductory sentence by adding the words “of this regulation” for clarification to correct a nonsubstantive scrivener’s error. The definition is also modified by adding a list of precursors and the requirements for considering PM, including timing requirements for considering condensable emissions.

Regulation, 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), (c) Definitions, (14) “Significant”:

The definition of “Significant” was revised to include new thresholds for PM_{2.5}.

Instructions:

Amend Regulation 61-62, Air Pollution Control Regulations and Standards, pursuant to each instruction provided below with the text of the amendments.

Text:**Regulation, 61-62.5, Standard No. 7, Prevention of Significant Deterioration****(b) Definitions, (44) “Regulated NSR Pollutant” shall be revised as follows:**

(44) “**Regulated NSR pollutant,**” for purposes of this regulation, means the following:

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(b) Sulfur dioxide is a precursor to PM_{2.5} in all attainment and unclassifiable areas.

(c) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator’s satisfaction or the EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area’s ambient PM_{2.5} concentrations.

(d) Volatile organic compounds are presumed not to be precursors to PM_{2.5} in any attainment or unclassifiable area, unless the State demonstrates to the Administrator’s satisfaction or the EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area’s ambient PM_{2.5} concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Clean Air Act;

(iii) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Clean Air Act;

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(iv) Any pollutant that otherwise is subject to regulation under the Clean Air Act; except that any or all hazardous air pollutants either listed in section 112 of the Clean Air Act or added to the list pursuant to section 112(b)(2) of the Clean Air Act, which have not been delisted pursuant to section 112(b)(3) of the Clean Air Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Clean Air Act;

(v) Reserved;

(vi) Particulate matter (PM) emissions, PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM_{2.5} and PM₁₀ in PSD permits. Compliance with emissions limitations for PM, PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(b) Definitions, (49)(i) “Significant” shall be revised as follows:

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

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter:

25 tpy of particulate matter emissions;

15 tpy of PM₁₀ emissions;

10 tpy of direct PM_{2.5};

40 tpy of sulfur dioxide emissions;

40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under (b)44 of this section

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

Fluorides: 3 tpy

Sulfuric acid mist: 7 tpy

Hydrogen sulfide (H₂S): 10 tpy

Total reduced sulfur (including H₂S): 10 tpy

Reduced sulfur compounds (including H₂S): 10 tpy

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

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

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

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

(i) Exemptions, (5)(i) shall be revised as follows:

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

- Carbon monoxide-- $575 \mu\text{g}/\text{m}^3$, 8-hour average;
- Nitrogen dioxide-- $14 \mu\text{g}/\text{m}^3$, annual average;
- Particulate matter-- $10 \mu\text{g}/\text{m}^3$ of PM_{10} , 24-hour average;
- Sulfur dioxide-- $13 \mu\text{g}/\text{m}^3$, 24-hour average;
- Ozone;¹
- Lead-- $0.1 \mu\text{g}/\text{m}^3$, 3-month average;
- Fluorides-- $0.25 \mu\text{g}/\text{m}^3$, 24-hour average;
- Total reduced sulfur-- $10 \mu\text{g}/\text{m}^3$, 1-hour average;
- Hydrogen sulfide-- $0.2 \mu\text{g}/\text{m}^3$, 1-hour average;
- Reduced sulfur compounds-- $10 \mu\text{g}/\text{m}^3$, 1-hour average; or

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

(i) Exemptions, (5)(ii) shall be revised as follows:

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i), or the pollutant is not listed in paragraph (i)(5)(i).

Regulation, 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR)

(c) Definitions, (13) “Regulated NSR pollutant” shall be revised as follows:

(13) “Regulated NSR pollutant,” for purposes of this regulation, means the following:

- (A) Oxides of nitrogen or any volatile organic compounds;
- (B) Any pollutant for which a national ambient air quality standard has been promulgated;
- (C) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (c)(13)(A) or (B), provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

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(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas;

(c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(d) Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

(D) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in permits issued under this ruling. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(c) Definitions, (14) "Significant" shall be revised as follows:

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

Pollutant Emission Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Particulate matter:

15 tpy of PM_{10} emissions;

10 tpy of direct $PM_{2.5}$;

40 tpy of sulfur dioxide emissions;

40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph 13 of this section

Sulfur dioxide: 40 tpy

Ozone: 40 tpy of volatile organic compounds or oxides of nitrogen

Lead: 0.6 tpy

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendments to R. 61-62.5, Standard No. 7, Prevention of Significant Deterioration, R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR).

Purpose: The Department has amended R. 61-62.5, Standard No. 7, Prevention of Significant Deterioration; R. 61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and the SIP to incorporate the provisions of the Phase 2 Ozone Rule and the NSR PM_{2.5} Implementation Rule, and to add a nonsubstantive clarification to correct a scrivener’s error.

Legal Authority: The legal authority for R. 61-62, Air Pollution Control Regulations and Standards, is S.C. Code Sections 48-1-10, et seq.

Plan for Implementation: The amendments took effect upon approval by the Board of Health and Environmental Control and publication in the State Register. The amendments will be implemented by providing the regulated community with copies of the regulation, sending an email to stakeholders, and publishing the Notice of Final Regulation and updated regulations on the Department’s website.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The EPA regularly promulgates amendments to federal regulations to include clarification, guidance, technical amendments, and strengthen air quality provisions. States are mandated by law to adopt these federal amendments. These amendments are reasonable as they promote consistency and ensure conformity of state regulations to federal requirements.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the state or its political subdivisions resulting from this revision. The standards to be adopted are already effective and applicable to the regulated community as a matter of federal law, thus regulated community has already incurred the cost of these regulations. The amendments will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in federal regulations through the amendments to R. 61-62, Air Pollution Control Regulations and Standards, and the SIP will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

The state’s authority to implement federal requirements, which are beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

Appendix C

Copy of Legal Authority

LEGAL AUTHORITY¹

No plan for attaining a goal, the attainment of which is dependent upon regulatory action, can be used with any degree of effectiveness unless the legal framework is strong. Consequently, the Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR 51, as amended, define the necessary statutory powers which must be immediately available to states to carry out the responsibility to the Clean Air Act.

40 CFR 51.230 sets forth six specific requirements for State authority. The South Carolina Pollution Control Act, Act 1157 of 1970, as amended, S. C. Code Sections 48-1-10 thru - 350 (1976), provides the State's authority to respond to these requirements. The Attorney General of the State of South Carolina has given an opinion as to the adequacy of South Carolina laws, as follows:

Legal Authority Required 40 CFR 51	Adequacy of S. C. Law	S. C. Statutes Involved
(a) "Adopt emission standards and limitations and any other measures necessary for attainment and maintenance of national standards."	Adequate	S. C. Code Secs. 48-1-20, 48-1-50(23)
(b) "Enforce applicable laws, regulations, & standards, and seek injunctive relief."	Adequate	S. C. Code Sec. 48-1-50(1), (3), (4), (5), (11); Secs. 48-1-120, 48-1-130, 48-1-210, 48-1-320, 48-1-330.
(c) "Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons, i.e., authority comparable to that available to the Administrator under section 305 of the Act."	Adequate	S. C. Code Sec. 48-1-290.
(d) "Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard."	Adequate	S. C. Code Sec. 48-1-50(5), (10); Secs. 48-1-100, 48-1-110.
(e) "Obtain Information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, Including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources."	Adequate	S. C. Code Sec. 48-1-50(10), (20), (22), (24).
(f) "Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such stationary sources; also authority for the State to make such data available to the public as reported and as correlated with any applicable emission standards or limitations."	Adequate	S. C. Code Secs. 48-1-50(22), 48-1-270.

¹ Section 2 of the EPA-approved South Carolina Air Quality Implementation Plan (SIP), which defines the State's statutory powers as required in 40 CFR 51.230.

Public Hearings

The South Carolina Pollution Control Act provides for notice and public hearings prior to action by the Board of Health and Environmental Control concerning adoption of regulations and standards, adoption or modification of final compliance dates, and other specified legal actions.

Additionally, Act 176 of 1977 enacted by the South Carolina General Assembly requires, among other things, that at least thirty days public notice be given before adoption, amendment or repeal of any rule. It also requires that the substance of the intended action or a description of the subjects and issues involved be made known. While this act escapes the actual requirement for a public hearing in each case, the two Acts taken together do impose the requirement of a thirty days notice of public hearing, assuring compliance with the requirements of 40 CFR 51.102, as amended.