Burgos, Alexander N

Subject: FW: December 2024-Request for Technical Changes
Attachments: 15A NCAC 02Q .0529.docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Monday, December 16, 2024 5:22 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hosken, Ashley C <ashley.hosken@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Subject: Re: December 2024-Request for Technical Changes

Hello,

The final rule is attached for EMC - 15A NCAC 02Q .0529.

Thank you.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

15A NCAC 02Q .0529 is proposed for adoption with changes as published in 39:01 NCR 35 as follows:

15A NCAC 02Q .0529 TITLE V INSIGNIFICANT RESEARCH AND DEVELOPMENT ACTIVITIES EXEMPTION

(a) For the purposes of this Rule, "research and development activities" or "R&D activities" means the following:

(1) activities conducted to test more efficient production processes or methods for preventing or reducing adverse [environmental impacts,] impacts on the environment, provided that the activities do not include or contribute to the production of an intermediate or final product for sale or exchange for commercial profit; and

(2) activities conducted at a research or laboratory [facility] facility, [that is operated under the close supervision of technically trained personnel] the primary purpose of which is to conduct research and development into new processes and [products] products, and that is not engaged in or contributing to the manufacture of products for sale or exchange for commercial profit.

(b) Notwithstanding the definition of "insignificant activities because of size or production rate" in 15A NCAC 02Q .0503(8), R&D activities that meet the definition in Paragraph (a) of this Rule and are located at a major [facility] facility, as defined pursuant to 15A NCAC 02Q .0103, shall qualify as an insignificant activity because of size or production rate if the R&D activities meet the [requirements of this Paragraph:] following requirements:

(1) Emissions from the R&D activities would not violate any applicable emissions standard;

(2) Actual emissions of particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon [monoxide] monoxide, from the R&D activities, before accounting for air pollution control devices, are each no more than five tons per year;

(3) Actual emissions of each hazardous air pollutant from the R&D activities, before air pollution control devices, are below 1,000 pounds per year; and

(4) Potential [emissions] emissions, as defined in 15A NCAC 02Q .0103, from the R&D activities are less than the major source emission thresholds specified in 40 CFR [70.2.] 70.2, which have been incorporated by reference in 15A NCAC 02Q .0106.

(c) Pursuant to the application requirements in 15A NCAC 02Q .0507(b), the owner or operator of a new major facility shall include in the Title V permit application R&D activities that qualify as an insignificant activity because of size or production rate pursuant to Paragraph (b) of this Rule. For an existing major facility with new R&D activities that qualify as an insignificant activity pursuant to Paragraph (b) of this Rule, the owner or operator shall provide notification of the R&D activities to the Division of Air Quality no less than seven days prior to commencing the R&D [activity.] activities. The owner or operator of insignificant R&D [activities] activities, pursuant to Paragraph (b) of this [Rule] Rule, shall [also] keep records at least 5 years demonstrating compliance with this Rule and provide those records to the Division upon request.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108; S.L. 2023-134 (Section 12.11.(d));*

Eff. January 1, 2025.

Burgos, Alexander N

Subject: FW: December 2024-Request for Technical Changes

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Monday, December 16, 2024 10:49 AM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hosken, Ashley C <ashley.hosken@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Subject: RE: December 2024-Request for Technical Changes

Good morning,

I intend to recommend to the RRC that all the final revised rule be approved at the December 19th meeting. Please submit all revised rules via email to oah.rules@oah.nc.gov no later than 5pm on December 17, 2024. The electronic copy must be saved as the official rule name (XX NCAC XXXX). Please include me on the email.

Thank you.

Travis C. Wiggs
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov

Burgos, Alexander N

Subject: FW: December 2024-Request for Technical Changes
Attachments: 15A NCAC 02Q .0529_revised (2).docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Friday, December 13, 2024 4:43 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hosken, Ashley C <ashley.hosken@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Subject: Re: December 2024-Request for Technical Changes

Hi Travis:
Responses are below and the rule is attached. Thank you.

Comment 7: The second sentence of your response provides a definition for "technically trained personnel". Please insert your definition into the Rule for clarity.

Response: "technically trained personnel" has been removed from the language of the rule.

Comment 12: In what is now lines 15-16, add a comma after "facility" and add a comma after ".0103".

Response: done.

Comment 17: Cross reference the Rule you cited defining "potential emissions". "Potential emissions, as defined in 15A NCAC 02Q .0103, …."

Response: done.

Comment 18: In now line 25, add to the end, "which have been incorporated by reference in 15A NCAC 02Q .0106".

Response: done.

Comment 21: Add "of Air Quality" after "Division".

Response: done.

Comment 24: In now line 32, add "at least 5 years" after "records".

Response: done.

History Note: Change the effective date to “2025”.

Response: done.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

15A NCAC 02Q .0529 is proposed for adoption with changes as published in 39:01 NCR 35 as follows:

15A NCAC 02Q .0529 TITLE V INSIGNIFICANT RESEARCH AND DEVELOPMENT ACTIVITIES EXEMPTION

(a) For the purposes of this Rule, "research and development activities" or "R&D activities" means the following:

(1) activities conducted to test more efficient production processes or methods for preventing or reducing adverse [environmental impacts,] impacts on the environment, provided that the activities do not include or contribute to the production of an intermediate or final product for sale or exchange for commercial profit; and

(2) activities conducted at a research or laboratory [facility] facility, [that is operated under the close supervision of technically trained personnel] the primary purpose of which is to conduct research and development into new processes and [products] products, and that is not engaged in or contributing to the manufacture of products for sale or exchange for commercial profit.

(b) Notwithstanding the definition of "insignificant activities because of size or production rate" in 15A NCAC 02Q .0503(8), R&D activities that meet the definition in Paragraph (a) of this Rule and are located at a major [facility] facility, as defined pursuant to 15A NCAC 02Q .0103, shall qualify as an insignificant activity because of size or production rate if the R&D activities meet the [requirements of this Paragraph:] following requirements:

(1) Emissions from the R&D activities would not violate any applicable emissions standard;

(2) Actual emissions of particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon [monoxide] monoxide, from the R&D activities, before accounting for air pollution control devices, are each no more than five tons per year;

(3) Actual emissions of each hazardous air pollutant from the R&D activities, before air pollution control devices, are below 1,000 pounds per year; and

(4) Potential [emissions] emissions, as defined in 15A NCAC 02Q .0103, from the R&D activities are less than the major source emission thresholds specified in 40 CFR [70.2.] 70.2, which have been incorporated by reference in 15A NCAC 02Q .0106.

(c) Pursuant to the application requirements in 15A NCAC 02Q .0507(b), the owner or operator of a new major facility shall include in the Title V permit application R&D activities that qualify as an insignificant activity because of size or production rate pursuant to Paragraph (b) of this Rule. For an existing major facility with new R&D activities that qualify as an insignificant activity pursuant to Paragraph (b) of this Rule, the owner or operator shall provide notification of the R&D activities to the Division of Air Quality no less than seven days prior to commencing the R&D [activity.] activities. The owner or operator of insignificant R&D [activities] activities, pursuant to Paragraph (b) of this [Rule] Rule, shall [also] keep records at least 5 years demonstrating compliance with this Rule and provide those records to the Division upon request.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108; S.L. 2023-134 (Section 12.11.(d));*

Eff. January 1, 2025.

Burgos, Alexander N

Subject: FW: December 2024-Request for Technical Changes

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Thursday, December 12, 2024 2:31 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hosken, Ashley C <ashley.hosken@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Subject: RE: December 2024-Request for Technical Changes

Thank you for the changes and responses. Please see my requests below that correspond to your comments.

- Comment 7: The second sentence of your response provides a definition for "technically trained personnel". Please insert your definition into the Rule for clarity.
- Comment 12: In what is now lines 15-16, add a comma after "facility" and add a comma after ".0103".
- Comment 17: Cross reference the Rule you cited defining "potential emissions". "Potential emissions, as defined in 15A NCAC 02Q .0103, ..."
- Comment 18: In now line 25, add to the end, "which have been incorporated by reference in 15A NCAC 02Q .0106".
- Comment 21: Add "of Air Quality" after "Division".
- Comment 24: In now line 32, add "at least 5 years" after "records".
- History Note: Change the effective date to "2025".

Please reply at your earliest convenience.

Thanks,

Travis C. Wiggs
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov

Burgos, Alexander N

Subject: FW: December 2024-Request for Technical Changes
Attachments: 15A NCAC 02Q .0529_revised.docx; Responses to technical change requests.docx; EPA White Paper_July 1995.pdf

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From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, December 12, 2024 11:13 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hosken, Ashley C <ashley.hosken@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Subject: Re: December 2024-Request for Technical Changes

Mr. Wiggs,

Attached is the rewritten rule, responses to your technical change requests, and supporting documentation for your review.

Thank you.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

15A NCAC 02Q .0529 is proposed for adoption with changes as published in 39:01 NCR 35 as follows:

15A NCAC 02Q .0529 TITLE V INSIGNIFICANT RESEARCH AND DEVELOPMENT ACTIVITIES EXEMPTION

(a) For the purposes of this Rule, "research and development activities" or "R&D activities" means the following:

(1) activities conducted to test more efficient production processes or methods for preventing or reducing adverse ~~[environmental impacts,]~~ impacts on the environment, provided that the activities do not include or contribute to the production of an intermediate or final product for sale or exchange for commercial profit; and

(2) activities conducted at a research or laboratory facility that is operated under the ~~[close]~~ supervision of technically trained ~~[personnel]~~ personnel, the primary purpose of which is to conduct research and development into new processes and ~~[products]~~ products, and that is not engaged in or contributing to the manufacture of products for sale or exchange for commercial profit.

(b) Notwithstanding the definition of "insignificant activities because of size or production rate" in 15A NCAC 02Q .0503(8), R&D activities that meet the definition in Paragraph (a) of this Rule and are located at a major facility as defined pursuant to 15A NCAC 02Q .0103 shall qualify as an insignificant activity because of size or production rate if the R&D activities meet the ~~[requirements of this Paragraph:]~~ following requirements:

(1) Emissions from the R&D activities would not violate any applicable emissions standard;

(2) Actual emissions of particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon ~~[monoxide]~~ monoxide, from the R&D activities, before accounting for air pollution control devices, are each no more than five tons per year;

(3) Actual emissions of each hazardous air pollutant from the R&D activities, before air pollution control devices, are below 1,000 pounds per year; and

(4) Potential emissions from the R&D activities are less than the major source emission thresholds specified in 40 CFR 70.2.

(c) Pursuant to the application requirements in 15A NCAC 02Q .0507(b), the owner or operator of a new major facility shall include in the Title V permit application R&D activities that qualify as an insignificant activity because of size or production rate pursuant to Paragraph (b) of this Rule. For an existing major facility with new R&D activities that qualify as an insignificant activity pursuant to Paragraph (b) of this Rule, the owner or operator shall provide notification of the R&D activities to the Division no less than seven days prior to commencing the R&D ~~[activity.]~~ activities. The owner or operator of insignificant R&D ~~[activities]~~ activities, pursuant to Paragraph (b) of this ~~[Rule]~~ Rule, shall ~~[also]~~ keep records demonstrating compliance with this Rule and provide those records to the Division upon request.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108; S.L. 2023-134 (Section 12.11.(d));*
Eff. January 1, 2024.

Request for Changes Pursuant to N.C. Gen. Stat. § 150B-21.10

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
    - Wrong: "~~a~~Association"
    - Right: "~~association~~ Association"
6. Treat punctuation as part of a word. For example:
    - Wrong: "day~~,~~; and"
    - Right: "~~day,~~ day; and"
7. Formatting instructions and examples may be found at: www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

Travis Wiggs
Rules Review Commission Counsel
Submitted to Agency on November 22, 2024

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02Q .0529

DEADLINE FOR RECEIPT: December 10, 2024.

***PLEASE NOTE:* This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On behalf of its Chair, the EMC and staff appreciate the opportunity to respond to the requested changes and requests for additional information. Several changes were made in response to the requests and for those requests that could not be accommodated, the EMC has provided an explanation regarding the lack of change.

Comment 1:

S.L. 2023-134, that requires the creation of this Rule, refers to the type of research and development activities in this Rule as "non-major" rather than "insignificant". Please consider making that change in the Rule name.

Agency Response: You are correct that the proposed rule uses a different term, but it does so to ensure that the most accurate terminology is used to maintain uniformity in the Code and reduce the potential for confusion among the regulated public. Session Law 2023-134, Section 12.11.(d) requires the EMC to adopt a rule establishing an exemption for certain R&D activities consistent with the EPA's position as provided in its July 10, 1995 "White Paper for Streamlined Development of Part 70 Permit Applications." The White Paper categorizes and refers to R&D activities that qualify for exemptions from permitting as "insignificant activities," which is a defined term and different from a "non-major" activity. *See* 15A NCAC 02Q .0503. By contrast, the term "non-major" sources refers to a different type of facility and emission source, which do not rise to the level requiring a Title V major permit but are still subject to permitting requirements. *Compare* White Paper, Part B.9 (R&D exemption) *with* Part B.10 (non-major permitting). Because the Session Law directs the EMC to create permit exemptions for R&D activities consistent with the White Paper, the EMC elected to use the term "insignificant sources" because it is the most accurate and is consistent with both the White Paper and the current regulatory framework for regulating emission sources and activities.

Travis Wiggs
Rules Review Commission Counsel
Submitted to Agency on November 22, 2024

Comment 2:

In line 5, consider replacing "means" with "includes".

Agency Response: Please see the response to Comment #5.

Comment 3:

In line 7, where is "adverse environmental impact" defined? Please cross-reference a citation to where the definition you intend is located.

Agency Response: The use of the word "adverse" in this context carries the ordinary meaning of the term, which is that the impact is detrimental or harmful to the environment (i.e., an activity that produces some effect that is not considered to be beneficial). For clarity, the language has been revised to "adverse impact on the environment."

Comment 4:

In lines 7-8, how does the regulated public determine whether the activities "contribute to the production of an intermediate or final product for sale or exchange for commercial profit"? How would the regulated public know if the R & D activities are going to help create a product used for commercial profit at the time the activities were conducted?

Agency Response: The regulated community understands that R&D is conducted to test the feasibility of a certain change (e.g., process change, formula change) or to test whether a product can be produced for commercial sale/profit. The EMC wants to make R&D as streamlined as possible for facilities to be able to conduct research without first needing to undergo the full permit modification process, while clearly delineating between those activities associated with the R&D phase from those activities and emissions created by, for example, the production of a product at commercial scale for profit. The exemption covers those "current" activities, which have the primary purpose of conducting research and development, as opposed to those activities associated with the production for profit. Where the "current" activity involves research and development and not the production of a product for sale/profit, then the exemption would apply as provided by the rule. If the permittee decides that a product is commercially viable based on the R&D and wants to begin producing the product at scale for profit, then it would need to amend its permit because the primary purpose of the "current" activity would no longer be research and development. In other words, facilities are allowed to test the process and create prototypes through R&D and then eventually scale that same process to produce quantities that are sold for profit, but there is a switch between when they are only testing it versus mass production, distribution, and gaining profit. The exemption applies up until that switch is made.

Comment 5:

In line 8, does the use of "and" after the semicolon mean both (1) and (2) must be applicable to constitute "R&D activities"? Or was it your intention that either (1) or (2) can be considered "R&D activities"?

Agency Response: Either (1) or (2) can be considered R&D activities that are covered by this Rule. Subparagraph (a)(1) is intended to cover a manufacturing process that produces product for sale, but has a small process area onsite that is used to conduct R&D. However, the R&D area/process line cannot be used to produce a product that

is sold for profit and cannot contribute significantly to the production of a product that is sold for profit. Subparagraph (a)(2) more so pertains to a facility that is dedicated to research or laboratory activities. With this intention in mind, it seems most appropriate to keep "means" in line 5 and "and" at the end of Subparagraph (a)(1).

Comment 6:

In (2), line 9, what is the definition of "close supervision" and where can it be found?
Agency Response: To make this term less ambiguous, the word "close" was removed. The definition of the word "supervision" is in accordance with the Cambridge definition: the act of watching a person or activity and making certain that everything is done correctly, safely, etc. The term "supervision" is understood among the regulated community.

Comment 7:

In line 10, what is the definition of "technically trained personnel" and where can it be found? What standards or criteria are used to determine if personnel are "technically trained"? Also, add a comma after "personnel".
Agency Response: The comma is added after "personnel". The regulated community understands that "technically trained personnel" means someone with industry-specific knowledge in a specific field that has completed the facility-specific training needed to operate the facility. There is no finite list of all technical trainings that might apply at any facility regulated by this Rule. The training requirements vary by industry type and company/job requirements and are not standardized for each R&D facility. As explained in the response to Comment #5, Subparagraph (a)(2) primarily covers facilities that are designed and dedicated to conducting research and laboratory activities, which may include schools and universities that have students conducting the activities under the supervision of technically trained personnel.

Comment 8:

In line 10, "primary purpose" is unclear and ambiguous. What standards or criteria are used to determine if a purpose is the "primary purpose"?
Agency Response: The term "primary purpose" is defined in the rule itself: "[…] the primary purpose of which is to conduct research and development into new processes and products, and that is not engaged in or contributing to the manufacture of products for sale or exchange for commercial profit." If the facility is designed and constructed to operate to conduct research and development (e.g., feasibility studies, testing), then R&D would be considered their primary purpose. Facilities can demonstrate that their primary purpose is R&D through a variety of ways, including through the facility's North American Industry Classification System (NAICS) code or Standard Industrial Classification (SIC) code, both of which include codes for various types of research operations. Additionally, the Paragraph defines R&D activities, rather than the entire facility. The main distinction between an R&D activity and the normal production operations of the facility hinges on the final product resulting from the activity not being sold/exchanged for commercial profit.

Comment 9:

In line 11, add a comma after "products". Also, in lines 11-12, how would the regulated public know if the R & D activities are going to help create a "new" product used for commercial profit at the time the activities were conducted?

Agency Response: Added a comma after "products". The purpose of this language is to differentiate between those facilities/activities that are used to manufacture products on a commercial scale for profit and have emissions incident to the production of the product, from those facilities whose primary purpose is only to conduct the research and development of the product to determine whether they can subsequently be manufactured at scale and sold for profit. In other words, as explained in the response to comment 1, the rule applies to the "current" activities of a facility. If the current activity is for R&D, then the exemption applies in accordance with the rule. If, however, the primary purpose changes to production, for example, then it would be necessary to amend the permit because the primary purpose of the "current" activity is no longer research and development.

R&D is conducted on a much smaller scale (e.g., at a pilot plant) and the associated emissions are considered "insignificant" for permitting purposes. The Rule (02Q .0529) allows facilities the flexibility to authorize these R&D activities in a streamlined manner, so that the company can conduct the research, testing, and trials, and create a small number of prototypes before deciding whether the "new" product is something that is viable for mass-production and commercial sale. Before producing the products that will be sold, the company must modify their air quality permit to allow for full-scale production (i.e., higher emissions). Since the full permit modification process takes several months (or longer), requires an application fee, and requires staff labor or hiring of consultants to prepare the application, the facility would not want to begin the permitting process prior to knowing if the "new" product is feasible.

Comment 10:

In (b), line 13, please delete "Notwithstanding" as it's vague and unnecessary. Also, why is all of line 13 through ".0503(8)" necessary? It seems to make (b) more unclear.

Agency Response: "Notwithstanding" is necessary because the criteria for "insignificant activities because of size or production rate" in 02Q .0503(8) is different from the criteria listed in Subparagraphs (b)(1)-(4) of this Rule. This part of the sentence clarifies that the criteria listed in 02Q .0529(b)(1)-(4), rather than 02Q .0503(8), should be used to determine whether R&D activities qualify as "insignificant activities because of size or production rate." Without explaining/noting the difference between the two definitions, the regulated community may be confused as to which definition their activity would fall under.

Comment 11:

In line 14, does "meet the definition in Paragraph (a)" mean both (1) and (2) must apply for Paragraph (b) to be applicable?

Agency Response: As stated in the response to Comment #5, either (1) or (2) would apply.

Comment 12:

In line 14, where is the definition of "major facility" located? Please cross-reference the definition for clarity.

Agency Response: The definition of major facility is found in 15A NCAC 02Q .0103: "Major facility" means a major source as defined pursuant to 40 CFR 70.2. A similar cross reference to 40 CFR 70.2 was added.

Comment 13:

In (b), are you mandating that the regulated public ignore Rule 15A NCAC 02Q .0503(8) for Paragraph (b) to apply? It's unclear to me if you're trying to create an exception to Rule 15A NCAC 02Q .0503(8). Please consider rephrasing Paragraph (b) or amending Rule 15A NCAC 02Q .0503(8) to make it clear if your intent is to create an exception.

Agency Response: The intent of this Rule is not to create an exemption from Rule 15A NCAC 02Q .0503(8). The current practice of reviewing R&D activities (and other insignificant activities) is performed under the existing provisions of Rule 02Q .0503(8). The requirements of new Rule 02Q .0529(b) are similar, but distinct and not identical, to the requirements for insignificant activities pursuant to Rule 02Q .0503(8). Going forward, 02Q .0529 will apply to R&D activities that qualify as insignificant because of size or production rate, while 02Q .0503(8) will apply to all other insignificant activities because of size or production rate. Both rules align with the EPA's position in the White Paper, where certain emission sources and activities, including R&D activities, can qualify as "insignificant because of size or production rate" if the activities meet the associated emission limits.

Comment 14:

In lines 15-16, add "following" before "requirements" and delete "of this Paragraph".

Agency Response: Completed. The Rule has been edited as suggested.

Comment 15:

In (1), line 17, where is the "applicable emissions standard" found? Please provide a citation for clarity.

Agency Response: This would be any emission standard (mass emission limit, concentration limit, etc.) that applies to the activity or facility. These emission standards can take various forms and can be in a state or federal rule, permit, SIP, or law. There would be too many possibilities to list all of them in a citation and the regulated community would understand where to find the emissions standard that applies to them specifically. Additionally, one of the primary purposes of a Title V permit is to list all the rules, standards, and requirements applicable to a facility in one document, so that the facility, regulators, and the public know what requirements the facility must comply with.

Comment 16:

In line 19, add a comma after "monoxide". Also, consider adding "are utilized" after "devices".

Agency Response: A comma was added after "monoxide". The phrase "before air pollution control devices" is not intended to prevent a control device from being used, but rather to specify that the associated emission reductions from the control device

should not be accounted for when determining if the actual emissions exceed the specified thresholds. To clarify this, the words "accounting for" have been added to the sentence.

Comment 17:

In (4), line 23, how are "Potential emissions" determined? What are the processes or standards used to make this determination?

Agency Response: 15A NCAC 02Q .0103 defines the term "potential emissions" as: "*the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations shall include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions shall include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions shall not include a facility's secondary emissions such as those from motor vehicles associated with the facility and shall not include emissions from insignificant activities because of category as defined in 15A NCAC 02Q .0503. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants regulated pursuant to that rule.*"

The term "potential emissions" is a specific term used by EPA throughout federal regulations, and the regulated community (i.e. those required to obtain Title V permits) is well familiar with the term, its use, and its meaning.

Comment 18:

In line 24, please incorporate "40 CFR 70.2" by reference in accordance with 150B-21.6.

Agency Response: 15A NCAC 02Q .0105, *Copies of Referenced Documents*, specifies where copies of the Code of Federal Regulations (CFR) sections referenced throughout Subchapter 02Q can be obtained. 15A NCAC 02Q .0106, *Incorporation by Reference*, states that the CFRs referenced in Subchapter 02Q are incorporated by reference and include subsequent amendments and editions unless a rule specifies otherwise. 15A NCAC 02Q .0105 and .0106 satisfy the requirements of N.C.G.S. 150B-21.6.

Comment 19:

In (c), line 25, the Rule you cited doesn't refer to a "new major facility". The Rule uses "new or existing source" instead. How is (c) pursuant to 15A NCAC 02Q .0507(b) if different language is used?

Agency Response: The citation to Rule 02Q .0507(b) is not intended to reference the "new major facility" but rather the application requirements for "insignificant activities because of size or production rate." As stated in 02Q .0507(b), "*an application shall include the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate but not including insignificant activities because of category.*" Rule 02Q .0502(a) specifies the types of facilities to which the 02Q .0500 Rules apply, including major facilities. By using the phrase, "pursuant to 15A NCAC 02Q .0507(b)" in this sentence, we are clarifying that the permit application requirements for R&D activities that are insignificant because

of size or category pursuant to this Rule (02Q .0529) are the same as the permit application requirements for other insignificant activities because of size or production rate (i.e., those under Rule 02Q .0503(8)).

In order to clarify the intent of the rule, the language has been revised to include, "Pursuant to the application requirements in 15A NCAC 02Q .0507(b), …."

Comment 20:

In lines 26-27, please delete "pursuant to Paragraph (b) of this Rule" as it's unnecessary.

Agency Response: The phrase "pursuant to Paragraph (b) of this Rule" is necessary because there are two similar (but distinct) uses of the language regarding insignificant activity. This clarifies which of the two places to look for the information about R&D activities specifically.

Comment 21:

In line 29, what "Division" are you referring to?

Agency Response: "Division" refers to the Division of Air Quality, as specified in 15A NCAC 02Q .0103.

Comment 22:

In line 29, consider making "activity" plural.

Agency Response: Completed, changed to "activities" as suggested.

Comment 23:

In line 30, add a comma after "activities" and after "Rule".

Agency Response: Completed. The commas have been added in both locations as suggested.

Comment 24:

In line 30, delete "also". How long shall the regulated public "keep records" to demonstrate compliance with this Rule?

Agency Response: "Also" was deleted. Pursuant to 40 CFR 70.6(a)(3) and (c)(1), which are referenced in 15A NCAC 02Q .0508 Permit Content, records are required to be maintained for a minimum of a least 5 years. All Title V permits also contain information regarding the retention of records and specifying that all required monitoring data and supporting information be maintained by the permittee for a period of at least five years.

Comment 25:

In the History Note, add the S.L. 2023-134 (Section 12.11(d)) that directed the creation of this Rule.

Agency Response: Completed.

Comment 26:

Please email me a copy of the July 10, 1995, "White Paper for Streamlined Development of Part 70 Permit Applications" that your agency used to draft this Rule.

Agency Response: It will be included and sent to you along with these responses. It is also available on EPA's website at: https://www.epa.gov/sites/default/files/2015-08/documents/fnlwtppr.pdf

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Travis Wiggs
Rules Review Commission Counsel
Submitted to Agency on November 22, 2024

July 10, 1995

MEMORANDUM

SUBJECT: White Paper for Streamlined Development of Part 70 Permit Applications

FROM: Lydia N. Wegman, Deputy Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

Please find attached a White Paper on Part 70 permit applications. The paper is designed to streamline and simplify the development of part 70 permit applications. The guidance was developed to respond to the concerns of industry and permitting authorities that preparation of initial permit applications was proving more costly and burdensome than necessary to achieve the goals of the Title V permit program.

The White Paper provides several streamlining improvements. Among them, it allows industry to:

- Provide emissions descriptions, and not emissions estimates, for emissions not regulated at the source, unless such estimates are needed for other purposes such as calculating permit fees;

- Submit checklists, rather than emission descriptions, for insignificant activities based on size/production rate and for risk management plans potentially owed

under section 112(r);

- Provide citations for applicable requirements, with qualitative descriptions for each emissions unit, and for prior new source review (NSR) permits;

- Exclude certain trivial and short-term activities from permit applications;

- Provide group treatment for activities subject to certain generally-applicable requirements;

- Certify compliance status without requiring re-consideration of previous applicability decisions;

- Use the Part 70 permit process to identify environmentally significant terms of NSR permits, which should be incorporated into the part 70 permit as federally-enforceable terms; and

- Submit tons per year estimates only where meaningful to do so and not, for example, for section 112(r)-only pollutants; such estimates should be based on generally-available information rather than new studies or testing.

There is an immediate need for the implementation of this guidance. Increasing numbers of sources are becoming subject to the requirement to file a complete part 70 application as more State part 70 programs are approved. I strongly encourage you to work with your States to effect near-term use of the White Paper guidance to streamline the application process.

I want to thank you and your staff for your support in developing this guidance and invite your suggestions on what additional guidance is needed to improve further the initial implementation of title V. If you should have any questions regarding the attached guidance, please contact Michael Trutna at (919) 541-5345 or Jeff Herring at (919) 541-3195.

Attachment

cc: M. Trutna (MD-12)
J. Herring (MD-12)
A. Eckert (2344)
J. Domike (2242A)
A. Schwartz (2344)

WHITE PAPER FOR

STREAMLINED DEVELOPMENT OF PART 70 PERMIT APPLICATIONS

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF AIR QUALITY PLANNING AND STANDARDS

July 10, 1995

Contacts: Michael Trutna (919) 541-5345
Jeff Herring (919) 541-3195

EPA WHITE PAPER FOR

STREAMLINED DEVELOPMENT OF PART 70 PERMIT APPLICATIONS

July 10, 1995

I. INTRODUCTION

The EPA is issuing this guidance to enable States to take immediate steps to reduce the costs of preparing and reviewing initial part 70 permit applications. A perceived lack of clarity in these requirements has led to an unintended escalation in permit application costs. Too often, sources have felt compelled to make conservative assumptions to assure themselves of receiving the "application shield" and avoiding enforcement actions.

Title V of the Clean Air Act (the Act) and its implementing regulations in part 70 set forth minimum requirements for State operating permit programs. In general, this program was not intended by Congress to be the source of new substantive requirements. Rather, operating permits required by title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements. Accordingly, operating permits and their accompanying applications should be vehicles for defining existing compliance obligations rather than for imposing new requirements or accomplishing other objectives.

There is an immediate need for this guidance. Most States and those local air pollution control agencies participating in the program (hereinafter referred to as "States") are expected to receive approval by the fall of 1995 of their part 70 operating permit programs to implement title V of the Act. As a result, most sources are in the process of preparing their initial applications, a number of sources have already submitted their initial applications, and a few part 70 permits have already been issued. As programs start to be implemented, concerns are being raised by States and sources as to the expectations for complete permit applications and permit content, the intended scope of the program, and the respective responsibilities of sources, permitting authorities, and the Environmental Protection Agency (EPA) in making implementation decisions in accomplishing permit issuance.

The EPA recognizes that the burden for filing a complete application may vary significantly among States as does the nature of their applicable requirements, status of source

compliance, air quality conditions, the type of permit fee schedule, and the size and complexity of their industry. However, EPA believes that the mentioned problems, if unaddressed, would threaten implementation of the title V program, and thus warrant a timely response. The clarifications contained in this policy statement are made under the current part 70 regulations and should typically not require State rulemaking. The EPA strongly urges States to allow sources to take near term advantage of the flexibility provided by this paper, particularly during the initial implementation phase of the program. It is imperative that the provisions and clarifications of this paper are implemented by States as quickly as possible. Most States need not wait for EPA approval before implementing this guidance, however they are encouraged to consult with the appropriate EPA Regional Office as they adjust implementation of their programs.

Section II of this paper articulates how part 70 allows permitting authorities considerable flexibility to make decisions regarding the completeness of applications and their adequacy to support initial permit issuance. This guidance makes clear that the part 70 rules do not impose unreasonable permit application preparation burdens. In particular, it accomplishes application streamlining by enabling and encouraging the use of:

- Tons per year (tpy) estimates for emissions units and pollutant combinations subject to applicable requirements, and only where meaningful to do so (e.g., not for section 112(r)-only pollutants); such estimates can be based on generally-available information rather than new studies or testing;

- Emissions descriptions, not estimates, for emissions not regulated at the source (unless needed for permit fee calculation, for purposes of establishing a permit shield or a plantwide applicability limit (PAL), or for resolution of applicable requirement coverage or major source status);

- Checklists rather than emission descriptions for insignificant activities based on size/production rate and risk management plans potentially owed under section 112(r);

- Exclusions for certain trivial and short-term activities from permit applications (see Attachment A);

- Group treatment for activities subject to certain generally-applicable requirements;

- Part 70 permit process to reconcile which terms of existing new source review (NSR) permits should be incorporated into the part 70 permit as federally-enforceable terms;

- Citations for applicable requirements with qualitative descriptions for each emissions unit, and for prior NSR permits as they may be revised; and

- Certifications of compliance status which do not require re-evaluation of previous applicability decisions.

This paper affirms EPA's strong commitment to successful program implementation. It is the first in a series of policy statements intended to alleviate known implementation concerns within the framework of the existing part 70 regulations. At the same time, the Agency is developing rulemaking which will afford a new streamlined approach to part 70 permit revisions and provide other relief not possible under the current rule. The policies set out in this paper are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

II. STREAMLINED DEVELOPMENT OF COMPLETE Part 70 APPLICATIONS

A. Current Requirements for Complete Applications (§ 70.5)

Within 12 months of the effective date of a part 70 program, all sources subject to the program must submit complete permit applications. The State may establish, and many have established, a phased schedule for application submittals.

Section 70.5(c)(3) requires a permit application to describe all emissions of pollutants for which a source is major and all emissions of regulated air pollutants. It also authorizes the permitting authority to obtain additional information as needed to verify which requirements are applicable to the source. Applications are also sometimes relied upon to evaluate the fee amount required under the approved permit fee schedule. Emissions information for these purposes does not always need to be detailed or precise. Information for applicability purposes need only be detailed enough to resolve any open questions about which requirements apply. Information for fee purposes only has to be consistent with what is required in applications by the permitting authority to implement its fee schedule. No information is needed when this activity is done outside the part 70 permit application process. Finally, in cases where the applicable requirement will be established or defined in the

part 70 permit (e.g., PAL), the part 70 permit application must contain additional information as needed to verify emissions levels and the basis for measuring changes from them.

Section 70.5(c) further requires the application to contain a compliance plan describing the compliance status of the source with respect to all applicable requirements. For sources that will not be in compliance at the time of permit issuance, the application must contain a narrative description of how the source will achieve compliance and a detailed schedule of remedial measures leading to compliance. If the source is in compliance, the application need only contain a statement that the source will continue to comply. For applicable requirements that will take effect during the permit term, the compliance plan may be a statement that the source will meet them. Each application must also include a certification of the source's compliance status with respect to each applicable requirement and a statement of the methods used for determining compliance. Finally, the responsible official must also certify that the application form and the compliance certification are true, accurate, and complete based on information and belief formed after reasonable inquiry.

Each part 70 program must contain criteria and streamlined procedures for determining when permit applications are complete. Applications for an initial part 70 permit may be considered complete if they have information sufficient to allow the permitting authority to begin processing the application. Unless the permitting authority determines that an application is not complete within 60 days, it will be considered complete by default. If the source submits a timely and complete application the source is shielded against penalties for operating without a permit until its part 70 permit is issued (i.e., the source is granted the "application shield").

Even after applications have been initially determined to be complete, the source must submit any additional information requested by the permitting authority to determine, or evaluate compliance with applicable requirements, within the reasonable timeframe allowed by the permitting authority, to maintain the effect of the application shield. In addition, until release of the draft permit, sources have an on-going responsibility to correct information or submit supplemental information needed to prepare the permit. The timeframe for updates will depend on the permitting authority's schedule for performing the technical review for a given application. The application shield once granted remains in effect until permit issuance even where the source augments its original application submittal in response to requests for more information by the permitting authority.

As mentioned, considerable confusion exists as to what constitutes a complete application under the requirements of part 70. Due to the significant new penalties for knowing violations and the extremely visible forum for processing permit applications, in the absence of clear guidance many sources have made or are making very conservative assumptions regarding their obligations. For example, many in the regulated community feel that a part 70 application can be complete only if it exhaustively catalogues every past and present emitting activity with great precision. Others fear that an application can never be complete since many Act requirements are still evolving, confusion exists as to which requirements are applicable to the source (e.g., what constitutes the State Implementation Plan (SIP)), or no monitoring data exists upon which to base the initial certification of compliance. Other concerns have been raised regarding the choice of emissions estimation techniques and the amount of information needed to support decisions of applicability or exemption, especially those involving the appropriate NSR for previous construction activities.

There is also a general apprehension that EPA will second guess any or all of these judgments during its review period and thereby impede the permit issuance process. Others are concerned that even if complete applications could be filed, they soon would grow obsolete and require updates before a draft permit could be prepared. In addition, there are concerns that EPA will issue guidance in the future which would establish extensive new requirements concerning the content of a complete application. As a result, worst-case assumptions for various determinations are being made effecting a level of rigidity and rigor as well as cost unintended by the current regulations.

This guidance is intended to correct these misunderstandings. It is intended to give States and sources direction on how States can reduce these burdens while achieving the requirements of title V. As previously stated, EPA believes that these streamlining ideas can and should be implemented under the current part 70 rule for most States. To the extent State forms reflect the current confusion, the Agency wishes to clarify the issues sufficiently for States to revise the portion of their forms implementing title V to be consistent with this guidance.

B. Content of Part 70 Permit Applications

1. Overview

This section describes the level of information which must be contained in a part 70 permit application for it to be considered complete. This guidance clarifies the minimum

requirements under the Federal regulations for acceptable part 70 permit applications. It grants a substantial degree of discretion to State permitting agencies. The EPA recognizes that different States may adopt different approaches to these minimum requirements depending on their local needs and circumstances, and that others may elect to go beyond those minimum requirements. However, at least in the initial program phase, EPA urges States to keep part 70 application requirements to the minimum needed to identify applicable requirements. In many instances, a qualitative description of emissions, or sometimes no description at all, will satisfy this standard.

This section specifically clarifies that there are different expectations for information from emissions units depending on whether and how applicable requirements apply. In addition, this section provides several policy clarifications aimed at lowering current application burdens associated with addressing insignificant activities, generic grouping of emissions units and activities, short-term activities, incorporation of current NSR permit conditions, section 112(r) requirements, and Research and Development (R&D) activities.

2. Required Emissions Information And Source Descriptions

Applications should contain information to the extent needed to determine major source status, to verify the applicability of part 70 or applicable requirements, to verify compliance with applicable requirements, and to compute a permit fee (as necessary). Section 70.5(c) requires the application to describe emissions of all regulated air pollutants for each emissions unit. This would require at least a qualitative description of all significant[1] emissions units, including those not regulated by applicable requirements.

While part 70 does not require detailed emissions inventory building, it does require limited emissions-related information for each pollutant and emissions unit combination which is regulated at the source. Section 70.5(c)(3)(iii) requires for such units emissions rate descriptions in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. The EPA interprets the tpy estimates to not be required at all where they would

[1]The term "significant" as used in this policy statement does not have the meaning as used in § 52.21 (e.g., 15 tpy PM-10, 40 tpy VOC) but rather means that the emissions unit does not qualify for treatment in the application as an insignificant emissions unit.

serve no useful purpose, where a quantifiable emissions rate is not applicable (e.g., section 112(r) requirements or a work practice standard), or where emissions units are subject to a generic requirement (see Section 4. Generic Grouping of Emissions Units and Activities).

On the other hand, more emissions information would presumptively be required to verify emissions levels and monitoring approaches where PALs or other plantwide emissions limits would be established or defined in part 70 permits. Another situation where additional emissions information might be needed is where the permitting authority would be granting the shield relative to a decision of non-applicability where a source is claiming an exemption based on an emissions level cutoff in a standard that has been issued for the category to which the emissions unit potentially belongs. In such cases additional information to support a determination that a requirement is not applicable may well be required. In addition, for the minority of States that use the part 70 application to determine the first year's permit fee, the application and its description of all regulated air pollutants for presumptive fee calculation must also be adequate for that purpose. Finally, additional emissions information might also be necessary in some cases to resolve a dispute over whether a particular requirement is applicable, or whether a source is major for a particular pollutant (additional information would not be necessary where a source would stipulate to the applicablity of the requirement and/or its major status).

Wherever emissions estimates are needed (unless the source independently decides to more accurately estimate emissions), use of available information should suffice. Any information that is sufficient to support a reasonable belief as to compliance or the applicability or non-applicability of requirements will be acceptable for these purposes. That could include AP-42 emission factors, emissions factors in other EPA documents, or reasonable engineering projections, as well as test data (see Section C. Quality of Required Information).

Any required tpy estimates are not to be included as federally-enforceable part 70 permit terms, unless otherwise required by an applicable requirement or requested by the source to avoid one. In addition, where tpy descriptions are needed, EPA does not believe that part 70 requires multiple forms of emissions estimates (i.e., actual allowable, and potential emissions). Also, where an emissions estimate is needed for part 70 purposes but is otherwise available (e.g., recent submittal of emissions inventory), then the permitting authority can allow the source to cross-reference this information for part 70 purposes.

Even if tpy estimates are not necessary, part 70 applications must describe all significant emissions units, including any which are not subject to any applicable requirement at any given emissions unit. Such unregulated emissions can include hazardous air pollutants (HAP) listed under section 112(b) of the Act and criteria pollutants that are unregulated for a particular emissions unit. A general description of emissions (i.e., simple identification of the significant pollutant or family of pollutants believed to be emitted by the emissions unit) should suffice. For part 70 purposes, the descriptions of emissions units themselves also can be quite general (i.e., descriptions need not contain information such as UTM coordinates or model and serial numbers for equipment, unless such information is needed to determine the applicability of, or to implement, an applicable requirement). Negative declarations are not required for pollutants that are not emitted by the emissions unit.

Some examples may help to illustrate where only source descriptions of regulated and unregulated emissions are necessary for title V purposes:

- An application for a de-greaser subject to a requirement to have a certain type of lid could describe the relevant applicable requirement and simply identify that it emits volatile organic compounds (VOC) and falls within the scope of the regulation. Quantification of the VOC emissions would not be necessary since the level of emissions is not relevant to the standard.

- An application for a storage tank subject to a requirement to have a certain type of seal, in addition to describing this requirement, would only need to generally identify the types of pollutants emitted, such as VOC and HAP generally.

- An application for a boiler that is grandfathered under the SIP could just identify that PM, SO2, NOx, VOC, lead, and HAP are emitted and that no applicable requirement is relevant.

3. Insignificant Activities

Section 70.5(c) allows the Administrator to approve as part of a State program a list of insignificant activities which need not be included in permit applications. For activities on the list, applicants may exclude from part 70 permit applications information that is not needed to determine (1) which applicable

requirements apply, (2) whether the source is in compliance with applicable requirements, or (3) whether the source is major. If insignificant activities are excluded because they fall below a certain size or production rate, the application must describe any such activities at the source which are included on the list. Even for such insignificant activities, the process for listing them in the application can be fairly simple. The permitting authority could allow the source merely to list in the application the kinds of insignificant activities that are present at the source or check them off from a list of insignificant activities approved in the program.

In addition to the insignificant activity provisions of § 70.5(c), there is flexibility inherent in § 70.5 to tailor the level of information required in the application to be commensurate with the need to determine applicable requirements. The EPA believes this inherent flexibility encompasses the idea that certain activities are clearly trivial (i.e., emissions units and activities without specific applicable requirements and with extremely small emissions) and can be omitted from the application even if they are not included on a list of insignificant activities approved in a State's part 70 program pursuant to § 70.5(c). Attachment A lists examples of activities which EPA believes should normally qualify as trivial in this sense. This list is intended only as a starting point for States to consider. The determination of whether any particular item should be on the State's trivial list may depend on State-specific factors (e.g., whether the activity is subject to the requirements of the SIP). Permitting authorities can also allow, on a case-by-case basis without EPA approval, exemptions similar to those activities identified in Attachment A. Additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to State lists of insignificant activities.

4. Generic Grouping of Emissions Units and Activities

Questions have arisen regarding whether emissions units and activities may be treated generically in the application and permit for certain broadly applicable requirements often found in the SIP. Examples of such requirements brought to EPA's attention include requirements that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., process weight requirements). These requirements are sometimes referred to as "generic," because they apply and are enforced in the same manner for all subject units or activities.

These requirements can normally be adequately addressed in the permit application with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear. Even where such generic requirements attach to individual small emissions units or activities, requiring a unit-by-unit or activity-by-activity description of numerous units or activities would generally impose a paperwork burden that would not be compensated by any gain in the practical enforceability of such relatively simple requirements. Therefore, provided the applicant documents the applicability of these requirements and describes the compliance status as required by § 70.5(c), the individual emissions units or activities may be excluded from the application, provided no other requirement applies which would mandate a different result. Similarly, the part 70 permit which must assure compliance with the generic applicable requirement would be written without specificity to applicable emissions units or activities.

In EPA's view, the validity of this approach stems from the nature of these applicable requirements. Accordingly, EPA believes application of this principle for grouping subject activities together generically should not depend on whether those activities qualify as trivial or insignificant. Where the applicable requirement is amenable to this approach, that is, where (1) the class of activities or emissions units subject to the requirement can be unambiguously defined in a generic manner and where (2) effective enforceability of that requirement does not require a specific listing of subject units or activities, permitting authorities may follow this approach regardless of whether subject activities have been listed as trivial or insignificant.

A lengthy list of the types of requirements suitable for this treatment is not possible here because, among other reasons, the examples of which EPA is aware are SIP requirements, and so vary from State to State. Permitting authorities are in the best position to decide which SIP requirements can be treated in this generic fashion. However, permitting authorities may wish to consult with the EPA Regional office in advance to clarify any uncertainties.

5. Short-term Activities

States can treat many short-term activities (e.g., activities occurring infrequently and for a short duration at a part 70 source) subject to an applicable requirement in the same fashion as activities subject to a generic requirement (see previous discussion). Since these activities are not present at

the source during preparation of the permit, the most that can be expected is generic treatment in the application. For such activities, the application and permit would not include emissions unit specificity but instead would contain a general duty to meet all applicable requirements that would apply to any qualifying short-term activity. Short-term activities which are not subject to an applicable requirement should be classified as insignificant activities or would qualify as trivial, and so would not be included in either the part 70 application or permit.

For example, a contractor-run sandblasting operation that is subject to a SIP limit for particulate matter might be operated on an infrequent but recurring basis might qualify for the general duty approach. However, where such activities re-occur with considerable frequency, the permitting authority could require them to be included in the permit. The source would also be obligated to revise the permit if operation of any short-term activity would be in conflict with the permit. If short-term construction activities occur, the part 70 permit application would need to address them only if they are subject to the State's NSR program or are otherwise in conflict with the envisioned part 70 permit.

6. Determination of Applicable SIP Requirements

One of the undisputed challenges facing both State and the regulated community in their efforts to develop complete applications is the determination of the applicable SIP requirements for a part 70 source. In some situations, it may be difficult to identify all the requirements in the SIP which are applicable to a particular source. Applicants, after consultation with the permitting authority, should include in permit applications the State rules which, to the best of their knowledge, are in the SIP. A good faith estimate will be enough to support both a valid compliance certification and a "completeness" determination. Review by the permitting authority, EPA, and the public may provide additional insight into whether any other applicable requirements exist. Any additions should not affect the validity of the original permit application and its eligibility for the application shield or of the accompanying compliance certification. However, the source would have to update its certification to account for any subsequently identified SIP requirements.

At least one State has developed a checklist of its air rules and required the applicant to check off which ones apply and select appropriate codes for rationalizing which ones do not apply. This type of approach should aid the source in providing

in the part 70 application its understanding of what applicable requirements apply. Sources in such a State may rely on the checklist. The EPA has also provided a contractor to document the approved SIP for each State. Where an EPA compilation exists, sources may rely on it as well. This process is well underway for most States and permitting authorities and, in many cases, EPA Regional Offices can provide the rule citation of the State rules that have been approved as part of the SIP.

Where a State has adopted a rule that is pending approval by EPA into the SIP, sources (if advised by the permitting authority) could in their applications note that the corresponding State-only requirements will become federally enforceable upon SIP approval. The permitting authority during review of the application would be responsible for determining if the SIP had been approved. If so, then the permitting authority would incorporate the requirements into the federally-enforceable portion of the permit. If the requirements had not been approved into the SIP, the permitting authority could incorporate the pending requirements into the State-only enforceable portion of the permit and note that the requirements would become federally enforceable upon SIP approval. The federally-enforceable portion of the permit would include the existing SIP requirements and condition them to expire upon EPA approval of the SIP revision. Once the SIP revision is approved, the pending permit terms would become federally-enforceable and the permit terms based on the superseded SIP rule would become void.

7. Incorporation of Prior NSR Permit Terms and Conditions

This paper provides guidance to States and sources in devising a means to revise NSR permit terms as appropriate (including classification as a State-only enforceable term) in conjunction with the part 70 permit issuance process. As used here, "new source review" refers to all forms of preconstruction permitting under programs approved into the SIP, including minor and major NSR (e.g., prevention of significant deterioration). Section 70.2 defines any term or condition of a NSR permit issued under a Federal or SIP-approved NSR program as being an applicable requirement. The Agency has concluded, however, that only environmentally significant terms need to be included in part 70 permits. The EPA recognizes that NSR permits contain terms that are obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program. Such terms, as subsequently explained, need not be incorporated into the part 70 permit to fulfill the purposes of the NSR and title V programs required under the Act.

Minor NSR, in particular, is a program which the State has discretion to mold as necessary to be consistent with the goals of the SIP. Therefore, the permitting authority has very broad discretion in determining the terms of minor NSR. This discretion also exists to a much lesser extent in crafting major NSR permits, since the Act and EPA regulations contain several express requirements for review of major subject sources. Many NSR permit terms written in the past for both minor and major NSR, however, were understandably not written with a view toward careful segregation of terms implementing the Act from State-only requirements.

The EPA believes that the part 70 permit issuance process, involving as it does review by the permitting authority, public, and EPA, presents an excellent opportunity for the permitting authority to make appropriate revisions to a NSR permit[2] contemporaneously with the issuance of the part 70 permit. The public participation procedures for issuance of a part 70 permit satisfy any procedural requirements of Federal law associated with any NSR permit revision. This parallel processing approach is also an excellent opportunity to minimize the administrative burden associated with such an exercise. By conducting a simultaneous revision to the NSR permit, the permitting authority would be revising the "applicable NSR requirement" for purposes of determining what must be included in the part 70 permit.

There are several factors which bound the available discretion of the permitting authority in deciding whether an NSR permit term is necessary and must be incorporated into the part 70 permit as a federally-enforceable condition. Certainly all NSR terms must be incorporated which are mandatory under EPA's governing regulations (e.g., best available control technology, lowest achievable emissions rate, and other applicable NSR emission limits), or are not mandatory under EPA regulations but are expressly required under the terms of the State's NSR program (e.g., new source performance standards (NSPS) and SIP emission limits, reporting and recordkeeping requirements[3]), or are voluntarily taken by the source to avoid

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[2]In many States, an NSR permit is subsequently converted to an operating permit leaving the preconstruction permit void. In other States, there is not a separate construction permit (i.e., single permit system). In either case the phrase "NSR permit" means the current permit in which the NSR applicable requirements reside.

[3]This does not preclude the possibility that certain federally-enforceable limits incorporated into the NSR permit may

an otherwise applicable requirement (e.g., emission limits used to create a "synthetic minor" source, to "net out" of major NSR, or to create tradeable offsets or other emission reduction credits).

On the other hand, other NSR permit terms and conditions may be patently obsolete and no longer relevant to the operation of the source, such as terms regulating construction activity during the building or modification of the source, where the construction is long completed and the statute of limitations on construction-phase activities has run out. These terms no longer serve a Federal purpose and need not be included as terms of the part 70 permit. Likewise, the State will also need to identify provisions from NSR permits that are not required under Federal law because they are unrelated to the purposes of the NSR program. Examples typically include odor limitations, and limitations on emissions of hazardous air pollutants where such limitations do not reflect a section 112 standard or a SIP criteria pollutant requirement. Where the State retains such conditions, it would draft the part 70 permit to specify that they are State-only conditions and incorporate them into the part 70 permit as such.

New source review permits are also likely to contain other terms that are not patently obsolete or irrelevant, but that the source and permitting authority agree are nevertheless extraneous, out-dated, or otherwise environmentally insignificant and inappropriate for inclusion in a federally-enforceable permit. Candidates for this exclusion include: (1) information incorporated by reference from an application for a preconstruction permit (to the extent this information is needed to enforce NSR permit terms it should be converted to terms in the part 70 permit), or (2) original terms of a preconstruction permit that has been superseded by other terms related to operation. The propriety of excluding other types of NSR permit terms will need to be evaluated on a case-by-case basis.

The EPA believes that the above parallel processing approach should be effective in most situations to incorporate the federally significant NSR permit terms into the part 70 permit in an efficient and workable way. However, the Agency recognizes that sources and permitting authorities may experience serious burden and timing concerns in accomplishing this process. Therefore, the Agency recommends the following approach, which

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qualify for generic treatment in the application and the permit as described in Section 4. Generic Grouping of Emissions Units and Activities.

EPA believes is consistent with the current part 70 rule. Under this approach, sources may in their part 70 permit applications, propose candidate terms from their current NSR permits which they reasonably believe should be considered for revision, deletion, or designation as being enforceable only by the State. Upon submittal of the application, the source would, as a Federal matter, only need to certify compliance status for those remaining NSR terms that it had earmarked for incorporation into the part 70 permit as federally-enforceable terms. The permitting authority, as part of the collaborative part 70 permit issuance process, would review the list of terms recommended in good faith by the source for deletion, revision, or State-only status and would ultimately agree or disagree with the source's proposal. Where the permitting authority decided that terms beyond those proposed as federally enforceable by the source should be retained to implement NSR, the source would be required to re-certify its application with respect to those NSR terms. Failure to do so within the timeframe required by the permitting authority would result in an inaccurate certification and the loss of the application shield.

The resolution of which NSR terms are to be incorporated should ideally be completed by the time of initial part 70 permit issuance. However, the resources available for timely issuance of thousands of part 70 permits may not be sufficient to achieve final resolution of NSR permit terms by permit issuance. Serious concerns have been raised by industry that they should not be subject to premature incorporation of these remaining permit terms into the part 70 permit. They believe that this could trigger, in many cases, inappropriate part 70 responsibilities (e.g., monitoring, reporting, and recordkeeping) for these terms.

The EPA believes that the current part 70 rule allows permitting authorities to address these concerns as well. Where States wish to extend the time in which to decide whether to revise, delete, or designate as State-only certain terms of current NSR permits, permitting authorities may stipulate in initial part 70 permits that any of those NSR terms so listed in the permit will be reviewed and be deleted, revised, or incorporated as federally-enforceable terms of the part 70 permit on or before a specified deadline (not later than the renewal of the permit). Prior to the deadline, the permitting authority would delete, revise, or make federally enforceable any terms that the State determined warranted such treatment. In the meantime, all other terms would continue to be enforceable under State law as terms of the NSR permit. The permitting authority would incorporate any NSR permit terms that were not deleted or designated as State-only into the federally enforceable portion of the part 70 permit consistent with its approved part 70 permit

revision procedures.

Finally the permitting authority may be required to add new terms to the part 70 permit to make any incorporated NSR permit terms enforceable from a practical standpoint, to reflect operation rather than construction, or to meet other part 70 requirements regarding the content of permits. Where a permitting authority has already converted the NSR permit into an existing State operating permit before incorporation into the part 70 permit, the terms of the current permit to operate will presumptively define how NSR permit terms should be incorporated into part 70 permits.

8. Section 112(r) Requirements

For sources otherwise required to obtain a part 70 permit, complete applications merely need to acknowledge (where appropriate) that the on-site storage and processing of section 112(r) chemicals may require the source to submit a section 112(r) risk management plan (RMP) when that requirement becomes applicable. This acknowledgment should be based on the "List of Regulated Substances and Their Thresholds" rule [59 FR 4478 (January 14, 1994)]. Sources are not required to quantify emissions of these substances (unless they are also pollutants listed under section 112(b), and such quantification is needed for fee collection purposes). To resolve issues of applicability, permitting authorities may ask for additional information from certain sources regarding materials stored and transferred and the amounts of chemicals used in certain processes if the source does not indicate its potential applicability with respect to the section 112(r) requirement to file an RMP.

9. Research and Development Activities

The EPA expects that R&D activities will generally be exempt from part 70 and not be involved in the part 70 application process since they are typically independent, non-major sources. The July 1992 part 70 preamble provided general guidance explaining that R & D activities could often be regarded as separate "sources" from any operation with which it were co-located (57 FR 32264 and 32269). The Agency is clarifying and confirming their substantial flexibility under the ongoing rulemaking action to revise part 70.

Some R&D activities can still be subject to part 70 because they are either individually major or a support facility making significant contributions to the product of a collocated major manufacturing facility. In addition, laboratory activities which

involve environmental and quality assurance/quality control sample analysis, as well as R&D, present similar permitting problems. Such activities should be eligible for classification as an insignificant activity if there are no applicable SIP requirements. Where applicable SIP requirements do apply, they typically consist of "work practice" (e.g., good laboratory practice) requirements. In this situation, permit applications would need to contain only statements acknowledging the applicability of, and certifying compliance with, these work practice requirements. There is no need for an extensive inventory of chemicals and activities or a detailed description of emissions from the R&D or laboratory activity. Similarly, there would be no need to monitor emissions as a part 70 permit responsibility.

10. Applications from Non-major Sources

Applications for non-major sources subject to part 70 can be less comprehensive than those for major sources. (Note that virtually all States have deferred the applicability of these sources as provided by part 70.) While permits for major sources must include all applicable requirements for all emissions units at the source, § 70.3(c)(2) stipulates that permits for non-major sources have to address only the requirements applicable to emissions units that cause the source to be subject to part 70 (e.g., requirements of sections 111 or 112 of the Act applicable to non-major sources). Other emissions units at non-major sources that do not trigger part 70 applicability, even if they are subject to applicable requirements, do not have to be included in the permit. Since permits for non-major sources do not have to include applicable requirements for emissions units that do not cause the source to be subject to part 70, no information on those units is needed in the permit application.

11. Supporting Information

The great majority of the detailed background information relied upon by the source to prepare the application need not be included in the application for it to be found complete. Even though certain emissions-related calculations [see § 70.5(c)(3)(viii)] are required, the application size can still be significantly reduced if the permitting authority allows the source to submit examples of calculations performed that illustrate the methodology used. Cost savings can be realized, even though the calculations are still performed, in that the efforts to exhaustively record them in the application can be omitted.

The permitting authority can request additional, more

detailed information needed to justify any questionable information or statement contained in the initial application or to write a comprehensive part 70 draft permit. Applications for permits which will establish a requirement uniquely found in the part 70 permit (such as an alternative reasonably available control technology (RACT) limit) would require more supporting information, including any required demonstration.

C. Quality of Required Information

The quality of emissions estimates where they are needed in the part 70 permit application depends on the reasonable availability of the necessary information and on the extent to which they are relied upon by the permitting authority to resolve disputed questions of major source status, applicability of requirements, and/or compliance with applicable requirements. In general, where estimates of emissions are necessary, reasonably-available information may be used.

Generally, the emissions factors contained in EPA's publication AP-42 and other EPA documents may be used to make any necessary calculation of emissions. When an acceptable range of values is defined for a general type of source situation, permitting authorities have considerable discretion to define the appropriate emissions factor value within that range. States are most often better able to make such decisions given their closer proximity to the particular source and its operation.

For purposes of certifying the truth and accuracy of the application, part 70 requires that emissions estimates be expressed in terms consistent with the applicable requirement. This does not mean that only test data is acceptable. Rather, the source may rely on any data using the same units and averaging times as in the test method. New testing is not required and emission factors are presumed to be acceptable for emissions calculations, but more accurate data are preferred if they are readily available. Emissions factors provided by permitting authorities are also allowed where EPA emission factors are missing or State or industry values provide greater accuracy. The applicant may also use other estimation methods (materials balance, source test, or continuous emissions monitoring (CEM) data) when emission estimates produced through the use of emission factors are not appropriate.

In disputed cases, the source may propose the least costly alternative estimation method as long as it will produce acceptable data. Owners and operators may propose use of emissions estimation methods of their choosing to the permitting authority when the resulting data is more accurate than that

obtained through the use of emissions factors. Sources are encouraged to contact the permitting authority to discuss the appropriate estimation techniques for a particular circumstance.

Emissions estimates when they are necessary for HAPs often become less precise below certain thresholds. The need for quantification or even estimation should therefore decrease the lower the levels are that are present. For example, VOC estimates based on manufacturer's safety data sheets may indicate that trace amounts of certain HAPs may be present. It is reasonable for the source to report these HAPs as present in trace amounts and not quantify them further or perform expensive testing procedures to collect more accurate data, unless the permitting authority requires otherwise. On the other hand, more precise estimates might be required to defend a position that a VOC source was below emissions cutoffs which subject it to a RACT requirement if the source appeared close to that threshold and it exact emissions level was in doubt.

D. Phase-In of Details for Completeness Determinations

Permitting authorities have considerable flexibility in processing the expected huge volume of permit applications so as to issue initial permits by the required deadline of 3 years after program approval. The § 70.5(c) requirement that a permit application will be complete only if it addresses all the information required in this section must be interpreted in light of the July 1992 preamble (which clarifies the § 70.5(c) requirement for completeness in terms of information needed by the permitting authority to begin processing of an application). Accordingly, the permitting authority may balance the need for information to support timely permit issuance pursuant to the schedule approved in the program against the workload associated with managing and updating as necessary the initially submitted information.

Sources must submit complete applications within 12 months of the effective date (i.e., 30 days after the Federal Register date where EPA approves the program) of a State part 70 program or on whatever schedule for application submittal the State establishes in its approved program for its sources. Permitting authorities may also require application submittals prior to part 70 program approval under State authority, however, a failure to comply with any application deadline earlier than the effective date for the program cannot be considered a violation of the Act.

The current rule allows permitting authorities to implement a two-step process for application completeness, first

determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation. For example, permitting authorities can initially find an application complete if it defines the applicable requirements, and major/minor source status; certifies compliance status with respect to all applicable requirements (subject to the limitation on this action provided for in Section H. Compliance Certification Issues); and allows the permitting authority to determine the approved permit issuance schedule. The application must also include a certification as to its truth, accuracy, and completeness. In any event, permitting authorities must award the application shield if the source submits a timely application which meets the criteria for completeness in § 70.5(c).

Under this approach, if the source has supplied at least initial information in all the areas required by the permit application form and has certified it appropriately, the permitting authority generally has flexibility to judge the application to be complete enough to begin processing. Accordingly, there should normally be no need for an applicant to submit an application many days in advance in order to build in extra time for an iterative process before the relevant submittal deadline. Sources scheduled for permitting during the first year of the transition schedule must submit any additional information as needed to meet fully the requirements of § 70.5(c) for completeness on a more immediate schedule so that their permit can be issued within that first year.

E. Updates to Initially Complete Applications Due to Change

Sources, to maintain their application's status as complete and therefore preserve the application shield, must respond to requests from the permitting authority for additional information to determine or evaluate compliance with applicable requirements within the reasonable timeframe established by the permitting authority. Where more information is needed in the permit application to continue its processing, permitting authorities may opt to add the additional information to the application themselves or require additional submittals from the source. Sources must promptly certify any additional information submitted by them and certify or revise any relevant information furnished by the permitting authority.

1. Changing Emissions Information

Updates to the initially complete application may be required if emissions information, such as revised emissions factors, changes or additional NSR projects are approved after an

application is submitted. The exact response required will depend in part on whether the change affects a source's applicable requirements or its compliance status and when it is discovered. If, after consultation with the permitting authority, it is determined that the applicability status of the source is affected by new emissions information (e.g., the change causes the source to become newly subject to applicable requirements or may affect its ability to comply with a current NSR permit condition), then the source must promptly submit the new information to the permitting authority, identify any new requirements that apply, and certify any change in the source's compliance status. The issuance of an NSR permit may also add a new applicable requirement that would need to be addressed by the part 70 permit.

If the new information is discovered before the draft permit has been issued, it should be submitted as an addendum to the application, and the draft permit should reflect the new information. The permitting authority and a source can agree on set intervals at which such updating is required in order to structure the process and make it more efficient. If new information is discovered after the draft permit has completed public review but before the proposed permit has been issued, the information should still be submitted, and it is the responsibility of the permitting authority to revise the permit accordingly.

If new information is discovered after the permit has been issued, the resulting change could, at the discretion of the permitting authority, be addressed as a permit revision or as a reopening. If the change would not allow a source to comply with its current permit, the source should initiate a permit revision.

If the information does not affect applicability of, or compliance with, any applicable requirement (e.g., only alters the tpy emissions estimates of regulated pollutants), the information need not be submitted until permit renewal. If the permitting authority requires submittal of new information earlier, however, then it must be submitted according to reasonable deadlines established by the permitting authority.

2. Other Changes

Other changes can also occur that would require the source, even absent a specific request from the permitting authority, to propose an update to an initially complete application. One example is where a new regulatory requirement becomes applicable to the source before the permit is issued.

F. Content Streamlining

1. Cross Referencing

The permitting authority may allow the application to cross-reference previously issued preconstruction and part 70 permits, State or local rules and regulations, State laws, Federal rules and regulations, and other documents that affect the applicable requirements to which the source is subject, provided the referenced materials are currently applicable and available to the public. The accuracy of any description of such cross-referenced documents is subject to the certification requirements of part 70. Such documents must be made available as part of the public docket on the permit action, unless they are published and/or are readily available (e.g., regulations printed in the Code of Federal Regulations or its State equivalent). In addition, materials that are available elsewhere within the same application can be cross referenced to another section of the application.

In many cases, incorporation of prior information from previously issued permits would be useful. Examples are where a source is updating a part 70 permit by referencing the appropriate terms of a NSR permit or renewing a part 70 permit by referencing the current permit and certifying that no change in source operation or in the applicable requirements has occurred. Even where existing permit conditions are expressed in terminology other than that used in the part 70 permit, cross-referencing can still be possible. Such citations, however, would have to provide sufficient translations of terms to ensure the same effect.

As discussed previously, the permitting authority may determine that certain terms and conditions of existing NSR permits are obsolete, environmentally insignificant, or not germane with respect to their incorporation into part 70 permits. Even when a NSR permit contain such terms, citation can still be used to the extent that the NSR permit provisions appropriate for part 70 permit incorporation are clearly identified through the cross-reference. Also, the NSR permit terms not cited for part 70 incorporation are still in effect as a matter of State law unless and until expressly deleted by the permitting authority. Wherever this citation approach is used, the permitting authority should review all referenced terms to ensure they meet part 70 requirements for enforceability.

The EPA believes that one reason for the excessive length and cost of some permit applications is that sources believe they are required to paraphrase or re-state in their entirety the

provisions of the Code of Federal Regulations (CFR) or other repositories of applicable requirements. Citations can be used to streamline how applicable requirements are described in an application and will also facilitate compliance by eliminating the possibility that part 70 permit terms will conflict with underlying substantive requirements. Indeed, many States have taken a citation-based approach as a way of streamlining applications and permits. Thus, a source could cite, rather than repeat in its application, the often extensive details of a particular applicable requirement (including current NSR permit terms), provided that the requirement is readily available and its manner of application to the source is not subject to interpretation. The citation must be clear with respect to limits and other requirements that apply to each subject emissions unit or activity. For example, a storage tank subject to subpart Kb of the NSPS would cite that requirement in its application rather than re-typing the provisions of the CFR.

2. Incorporation of Part 70 Applications by Reference into Permits

The EPA discourages the incorporation of entire applications by reference into permits. The concern with incorporation of the application by reference into the permit on a wholesale basis is the confusion created as to the requirements that apply to the source and the unnecessary limits to operational flexibility that such an incorporation might cause.

If States do incorporate part 70 applications by reference in their entirety into part 70 permits, EPA will consider information in the application to be federally enforceable only to the extent it is needed to make other necessary terms and conditions enforceable from a practical standpoint. Moreover, EPA does not interpret part 70 to require permit revisions for changes in the other aspects of the application.

3. Changing Application Forms

The EPA urges States to re-examine their permit application forms in light of their experience to date and the contents of this guidance. Although the revision of an application form requires a program revision when it impacts any portion of the form which was relied upon by EPA in approving the part 70 program for the State, such a revision can, in most cases, be accomplished through an exchange of letters with the appropriate EPA Regional Office. Changes made to implement this guidance can be effected immediately with implementing documents sent to the appropriate EPA Regional Office. Similarly, a State could notify the Regional Office in writing that the State intends to

make completeness determinations based on completion of parts of the existing forms to avoid costly changes in computerized form systems that have already been developed. This is another way that a State can act quickly to streamline application requirements while minimizing its own administrative burdens.

G. Responsible Official

Part 70 provides that a "responsible official" must perform certain important functions. In general, responsible officials must certify the truth, accuracy, and completeness of all applications, forms, reports, and compliance certifications required to be submitted by the operating permits program [§ 70.5(d)]. As an example, a responsible official must certify the truth, accuracy, and completeness of all information submitted as part of a permit application [§ 70.5(a)(2)] and that the source is in compliance "with all applicable requirements" under the Act [§ 70.5(c)(9)(i)]. In addition, part 70 requires responsible officials to certify monitoring reports, which must be submitted every 6 months, and "prompt" reports of any deviations from permit requirements whenever they occur.

The definition of responsible official in § 70.2 identifies specific categories of officials that have the requisite authority to carry out the duties associated with that role. The definition provides in part that the following corporate officials may be a responsible official:

> . . . a president, secretary, treasurer, or vice president or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit . . . . [emphasis added]

Similarly, for public agencies, the definition indicates the following persons may be responsible officials:

> . . . a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency . . . . [emphasis added]

Concerns have been raised over the apparent narrowness of the current definition of responsible official. In the August 1994 Federal Register notice, EPA responded to those concerns

related to acid rain by proposing a revision to the definition of responsible official to allow a person other than the designated representative to be the responsible official for activities not related to acid rain control at affected sources [59 FR 44527].

To respond to further concerns over the definition of responsible official as it applies to partnerships formed by corporations, or partnerships, or a combination of both, EPA confirms that the same categories of officials who can act as responsible officials for corporations can also act in that capacity for partnerships where they carry out responsibilities substantially similar to those in the same categories in corporations. Partnerships that are essentially unions of corporations and/or partnerships will normally have the same management needs as corporations and so will establish a management structure with categories of officials similar to those of most corporations. In these partnerships, the persons with the knowledge and authority to assure regulatory compliance are the officials of the partnership.

Interpreting the definition of responsible official as limiting the class of persons in partnerships that may be responsible officials to general partners would frustrate the intent of the definition because it would in many instances actually result in designating a person that is not in a position to adequately fulfill the role of a responsible official. For this reason, EPA believes it is reasonable for permitting authorities, in the case of partnerships composed of corporations and/or partnerships, to allow for the same flexibility in designating a responsible official as would be the case for corporations.

H. Compliance Certification Issues

To make the required compliance certification to accompany the initial part 70 permit applications, sources are required to review current major and minor NSR permits and other permits containing Federal requirements, SIP's and other documents, and other Federal requirements in order to determine applicable requirements for emission units. The EPA and/or the State permitting authority may request additional information concerning a source's emissions as part of the part 70 application process.

Companies are not federally required to reconsider previous applicability determinations as part of their inquiry in preparing part 70 permit applications. However, EPA expects companies to rectify past noncompliance as it is discovered. Companies remain subject to enforcement actions for any past

noncompliance with requirements to obtain a permit or meet air pollution control obligations. In addition, the part 70 permit shield is not available for noncompliance with applicable requirements that occurred prior to or continues after submission of the application.

ATTACHMENT A

LIST OF ACTIVITIES THAT MAY BE TREATED AS "TRIVIAL"

The following types of activities and emissions units may be presumptively omitted from part 70 permit applications. Certain of these listed activities include qualifying statements intended to exclude many similar activities.

Combustion emissions from propulsion of mobile sources, except for vessel emissions from Outer Continental Shelf sources.

Air-conditioning units used for human comfort that do not have applicable requirements under title VI of the Act.

Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.

Non-commercial food preparation.

Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

Janitorial services and consumer use of janitorial products.

Internal combustion engines used for landscaping purposes.

Laundry activities, except for dry-cleaning and steam boilers.

Bathroom/toilet vent emissions.

Emergency (backup) electrical generators at residential locations.

Tobacco smoking rooms and areas.

Blacksmith forges.

Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots) provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not

otherwise triggering a permit modification.[1]

Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.

Portable electrical generators that can be moved by hand from one location to another[2].

Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.

Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals.[3]

Air compressors and pneumatically operated equipment, including hand tools.

Batteries and battery charging stations, except at battery manufacturing plants.

Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP.[4]

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[1]Cleaning and painting activities qualify if they are not subject to VOC or HAP control requirements. Asphalt batch plant owners/operators must still get a permit if otherwise required.

[2]"Moved by hand" means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device.

[3]Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are more appropriate for treatment as insignificant activities based on size or production level thresholds. Brazing, soldering, welding and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this appendix.

[4]Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids should be based on size limits

Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

Equipment used to mix and package, soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

Drop hammers or hydraulic presses for forging or metalworking.

Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

Vents from continuous emissions monitors and other analyzers.

Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation.

Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit VOC or HAP.

CO_2 lasers, used only on metals and other materials which do not emit HAP in the process.

Consumer use of paper trimmers/binders.

Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

Laser trimmers using dust collection to prevent fugitive emissions.

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such as storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list.

Bench-scale laboratory equipment used for physical or chemical analysis, but not lab fume hoods or vents.[5]

Routine calibration and maintenance of laboratory equipment or other analytical instruments.

Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

Hydraulic and hydrostatic testing equipment.

Environmental chambers not using hazardous air pollutant (HAP) gasses.

Shock chambers.

Humidity chambers.

Solar simulators.

Fugitive emission related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

Process water filtration systems and demineralizes.

Demineralized water tanks and demineralizer vents.

Boiler water treatment operations, not including cooling towers.

Oxygen scavenging (de-aeration) of water.

Ozone generators.

Fire suppression systems.

Emergency road flares.

Steam vents and safety relief valves.

Steam leaks.

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[5]Many lab fume hoods or vents might qualify for treatment as insignificant (depending on the applicable SIP) or be grouped together for purposes of description.

Steam cleaning operations.

Steam sterilizers.

Burgos, Alexander N

Subject: FW: EMC - 15A NCAC 02Q
Attachments: EPA White Paper_July 1995.pdf

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Tuesday, December 10, 2024 4:05 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Hosken, Ashley C <ashley.hosken@deq.nc.gov>; Quinlan, Katherine L <katherine.quinlan@deq.nc.gov>
Subject: Re: EMC - 15A NCAC 02Q

Mr. Wiggs,

Per your request, attached is the referenced EPA white paper.

Thank you.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

July 10, 1995

MEMORANDUM

SUBJECT: White Paper for Streamlined Development of Part 70 Permit Applications

FROM: Lydia N. Wegman, Deputy Director /s/
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX, and X

Please find attached a White Paper on Part 70 permit applications. The paper is designed to streamline and simplify the development of part 70 permit applications. The guidance was developed to respond to the concerns of industry and permitting authorities that preparation of initial permit applications was proving more costly and burdensome than necessary to achieve the goals of the Title V permit program.

The White Paper provides several streamlining improvements. Among them, it allows industry to:

- Provide emissions descriptions, and not emissions estimates, for emissions not regulated at the source, unless such estimates are needed for other purposes such as calculating permit fees;

- Submit checklists, rather than emission descriptions, for insignificant activities based on size/production rate and for risk management plans potentially owed

under section 112(r);

- Provide citations for applicable requirements, with qualitative descriptions for each emissions unit, and for prior new source review (NSR) permits;

- Exclude certain trivial and short-term activities from permit applications;

- Provide group treatment for activities subject to certain generally-applicable requirements;

- Certify compliance status without requiring re-consideration of previous applicability decisions;

- Use the Part 70 permit process to identify environmentally significant terms of NSR permits, which should be incorporated into the part 70 permit as federally-enforceable terms; and

- Submit tons per year estimates only where meaningful to do so and not, for example, for section 112(r)-only pollutants; such estimates should be based on generally-available information rather than new studies or testing.

There is an immediate need for the implementation of this guidance. Increasing numbers of sources are becoming subject to the requirement to file a complete part 70 application as more State part 70 programs are approved. I strongly encourage you to work with your States to effect near-term use of the White Paper guidance to streamline the application process.

I want to thank you and your staff for your support in developing this guidance and invite your suggestions on what additional guidance is needed to improve further the initial implementation of title V. If you should have any questions regarding the attached guidance, please contact Michael Trutna at (919) 541-5345 or Jeff Herring at (919) 541-3195.

Attachment

cc: M. Trutna (MD-12)
J. Herring (MD-12)
A. Eckert (2344)
J. Domike (2242A)
A. Schwartz (2344)

WHITE PAPER FOR

STREAMLINED DEVELOPMENT OF PART 70 PERMIT APPLICATIONS

U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF AIR QUALITY PLANNING AND STANDARDS

July 10, 1995

Contacts: Michael Trutna (919) 541-5345
Jeff Herring (919) 541-3195

EPA WHITE PAPER FOR

STREAMLINED DEVELOPMENT OF PART 70 PERMIT APPLICATIONS

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I. INTRODUCTION

The EPA is issuing this guidance to enable States to take immediate steps to reduce the costs of preparing and reviewing initial part 70 permit applications. A perceived lack of clarity in these requirements has led to an unintended escalation in permit application costs. Too often, sources have felt compelled to make conservative assumptions to assure themselves of receiving the "application shield" and avoiding enforcement actions.

Title V of the Clean Air Act (the Act) and its implementing regulations in part 70 set forth minimum requirements for State operating permit programs. In general, this program was not intended by Congress to be the source of new substantive requirements. Rather, operating permits required by title V are meant to accomplish the largely procedural task of identifying and recording existing substantive requirements applicable to regulated sources and to assure compliance with these existing requirements. Accordingly, operating permits and their accompanying applications should be vehicles for defining existing compliance obligations rather than for imposing new requirements or accomplishing other objectives.

There is an immediate need for this guidance. Most States and those local air pollution control agencies participating in the program (hereinafter referred to as "States") are expected to receive approval by the fall of 1995 of their part 70 operating permit programs to implement title V of the Act. As a result, most sources are in the process of preparing their initial applications, a number of sources have already submitted their initial applications, and a few part 70 permits have already been issued. As programs start to be implemented, concerns are being raised by States and sources as to the expectations for complete permit applications and permit content, the intended scope of the program, and the respective responsibilities of sources, permitting authorities, and the Environmental Protection Agency (EPA) in making implementation decisions in accomplishing permit issuance.

The EPA recognizes that the burden for filing a complete application may vary significantly among States as does the nature of their applicable requirements, status of source

compliance, air quality conditions, the type of permit fee schedule, and the size and complexity of their industry. However, EPA believes that the mentioned problems, if unaddressed, would threaten implementation of the title V program, and thus warrant a timely response. The clarifications contained in this policy statement are made under the current part 70 regulations and should typically not require State rulemaking. The EPA strongly urges States to allow sources to take near term advantage of the flexibility provided by this paper, particularly during the initial implementation phase of the program. It is imperative that the provisions and clarifications of this paper are implemented by States as quickly as possible. Most States need not wait for EPA approval before implementing this guidance, however they are encouraged to consult with the appropriate EPA Regional Office as they adjust implementation of their programs.

Section II of this paper articulates how part 70 allows permitting authorities considerable flexibility to make decisions regarding the completeness of applications and their adequacy to support initial permit issuance. This guidance makes clear that the part 70 rules do not impose unreasonable permit application preparation burdens. In particular, it accomplishes application streamlining by enabling and encouraging the use of:

- Tons per year (tpy) estimates for emissions units and pollutant combinations subject to applicable requirements, and only where meaningful to do so (e.g., not for section 112(r)-only pollutants); such estimates can be based on generally-available information rather than new studies or testing;

- Emissions descriptions, not estimates, for emissions not regulated at the source (unless needed for permit fee calculation, for purposes of establishing a permit shield or a plantwide applicability limit (PAL), or for resolution of applicable requirement coverage or major source status);

- Checklists rather than emission descriptions for insignificant activities based on size/production rate and risk management plans potentially owed under section 112(r);

- Exclusions for certain trivial and short-term activities from permit applications (see Attachment A);

- Group treatment for activities subject to certain generally-applicable requirements;

- Part 70 permit process to reconcile which terms of existing new source review (NSR) permits should be incorporated into the part 70 permit as federally-enforceable terms;

- Citations for applicable requirements with qualitative descriptions for each emissions unit, and for prior NSR permits as they may be revised; and

- Certifications of compliance status which do not require re-evaluation of previous applicability decisions.

This paper affirms EPA's strong commitment to successful program implementation. It is the first in a series of policy statements intended to alleviate known implementation concerns within the framework of the existing part 70 regulations. At the same time, the Agency is developing rulemaking which will afford a new streamlined approach to part 70 permit revisions and provide other relief not possible under the current rule. The policies set out in this paper are intended solely as guidance, do not represent final Agency action, and cannot be relied upon to create any rights enforceable by any party.

II. STREAMLINED DEVELOPMENT OF COMPLETE Part 70 APPLICATIONS

A. Current Requirements for Complete Applications (§ 70.5)

Within 12 months of the effective date of a part 70 program, all sources subject to the program must submit complete permit applications. The State may establish, and many have established, a phased schedule for application submittals.

Section 70.5(c)(3) requires a permit application to describe all emissions of pollutants for which a source is major and all emissions of regulated air pollutants. It also authorizes the permitting authority to obtain additional information as needed to verify which requirements are applicable to the source. Applications are also sometimes relied upon to evaluate the fee amount required under the approved permit fee schedule. Emissions information for these purposes does not always need to be detailed or precise. Information for applicability purposes need only be detailed enough to resolve any open questions about which requirements apply. Information for fee purposes only has to be consistent with what is required in applications by the permitting authority to implement its fee schedule. No information is needed when this activity is done outside the part 70 permit application process. Finally, in cases where the applicable requirement will be established or defined in the

part 70 permit (e.g., PAL), the part 70 permit application must contain additional information as needed to verify emissions levels and the basis for measuring changes from them.

Section 70.5(c) further requires the application to contain a compliance plan describing the compliance status of the source with respect to all applicable requirements. For sources that will not be in compliance at the time of permit issuance, the application must contain a narrative description of how the source will achieve compliance and a detailed schedule of remedial measures leading to compliance. If the source is in compliance, the application need only contain a statement that the source will continue to comply. For applicable requirements that will take effect during the permit term, the compliance plan may be a statement that the source will meet them. Each application must also include a certification of the source's compliance status with respect to each applicable requirement and a statement of the methods used for determining compliance. Finally, the responsible official must also certify that the application form and the compliance certification are true, accurate, and complete based on information and belief formed after reasonable inquiry.

Each part 70 program must contain criteria and streamlined procedures for determining when permit applications are complete. Applications for an initial part 70 permit may be considered complete if they have information sufficient to allow the permitting authority to begin processing the application. Unless the permitting authority determines that an application is not complete within 60 days, it will be considered complete by default. If the source submits a timely and complete application the source is shielded against penalties for operating without a permit until its part 70 permit is issued (i.e., the source is granted the "application shield").

Even after applications have been initially determined to be complete, the source must submit any additional information requested by the permitting authority to determine, or evaluate compliance with applicable requirements, within the reasonable timeframe allowed by the permitting authority, to maintain the effect of the application shield. In addition, until release of the draft permit, sources have an on-going responsibility to correct information or submit supplemental information needed to prepare the permit. The timeframe for updates will depend on the permitting authority's schedule for performing the technical review for a given application. The application shield once granted remains in effect until permit issuance even where the source augments its original application submittal in response to requests for more information by the permitting authority.

As mentioned, considerable confusion exists as to what constitutes a complete application under the requirements of part 70. Due to the significant new penalties for knowing violations and the extremely visible forum for processing permit applications, in the absence of clear guidance many sources have made or are making very conservative assumptions regarding their obligations. For example, many in the regulated community feel that a part 70 application can be complete only if it exhaustively catalogues every past and present emitting activity with great precision. Others fear that an application can never be complete since many Act requirements are still evolving, confusion exists as to which requirements are applicable to the source (e.g., what constitutes the State Implementation Plan (SIP)), or no monitoring data exists upon which to base the initial certification of compliance. Other concerns have been raised regarding the choice of emissions estimation techniques and the amount of information needed to support decisions of applicability or exemption, especially those involving the appropriate NSR for previous construction activities.

There is also a general apprehension that EPA will second guess any or all of these judgments during its review period and thereby impede the permit issuance process. Others are concerned that even if complete applications could be filed, they soon would grow obsolete and require updates before a draft permit could be prepared. In addition, there are concerns that EPA will issue guidance in the future which would establish extensive new requirements concerning the content of a complete application. As a result, worst-case assumptions for various determinations are being made effecting a level of rigidity and rigor as well as cost unintended by the current regulations.

This guidance is intended to correct these misunderstandings. It is intended to give States and sources direction on how States can reduce these burdens while achieving the requirements of title V. As previously stated, EPA believes that these streamlining ideas can and should be implemented under the current part 70 rule for most States. To the extent State forms reflect the current confusion, the Agency wishes to clarify the issues sufficiently for States to revise the portion of their forms implementing title V to be consistent with this guidance.

B. Content of Part 70 Permit Applications

1. Overview

This section describes the level of information which must be contained in a part 70 permit application for it to be considered complete. This guidance clarifies the minimum

requirements under the Federal regulations for acceptable part 70 permit applications. It grants a substantial degree of discretion to State permitting agencies. The EPA recognizes that different States may adopt different approaches to these minimum requirements depending on their local needs and circumstances, and that others may elect to go beyond those minimum requirements. However, at least in the initial program phase, EPA urges States to keep part 70 application requirements to the minimum needed to identify applicable requirements. In many instances, a qualitative description of emissions, or sometimes no description at all, will satisfy this standard.

This section specifically clarifies that there are different expectations for information from emissions units depending on whether and how applicable requirements apply. In addition, this section provides several policy clarifications aimed at lowering current application burdens associated with addressing insignificant activities, generic grouping of emissions units and activities, short-term activities, incorporation of current NSR permit conditions, section 112(r) requirements, and Research and Development (R&D) activities.

2. Required Emissions Information And Source Descriptions

Applications should contain information to the extent needed to determine major source status, to verify the applicability of part 70 or applicable requirements, to verify compliance with applicable requirements, and to compute a permit fee (as necessary). Section 70.5(c) requires the application to describe emissions of all regulated air pollutants for each emissions unit. This would require at least a qualitative description of all significant[1] emissions units, including those not regulated by applicable requirements.

While part 70 does not require detailed emissions inventory building, it does require limited emissions-related information for each pollutant and emissions unit combination which is regulated at the source. Section 70.5(c)(3)(iii) requires for such units emissions rate descriptions in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. The EPA interprets the tpy estimates to not be required at all where they would

[1]The term "significant" as used in this policy statement does not have the meaning as used in § 52.21 (e.g., 15 tpy PM-10, 40 tpy VOC) but rather means that the emissions unit does not qualify for treatment in the application as an insignificant emissions unit.

serve no useful purpose, where a quantifiable emissions rate is not applicable (e.g., section 112(r) requirements or a work practice standard), or where emissions units are subject to a generic requirement (see Section 4. Generic Grouping of Emissions Units and Activities).

On the other hand, more emissions information would presumptively be required to verify emissions levels and monitoring approaches where PALs or other plantwide emissions limits would be established or defined in part 70 permits. Another situation where additional emissions information might be needed is where the permitting authority would be granting the shield relative to a decision of non-applicability where a source is claiming an exemption based on an emissions level cutoff in a standard that has been issued for the category to which the emissions unit potentially belongs. In such cases additional information to support a determination that a requirement is not applicable may well be required. In addition, for the minority of States that use the part 70 application to determine the first year's permit fee, the application and its description of all regulated air pollutants for presumptive fee calculation must also be adequate for that purpose. Finally, additional emissions information might also be necessary in some cases to resolve a dispute over whether a particular requirement is applicable, or whether a source is major for a particular pollutant (additional information would not be necessary where a source would stipulate to the applicablity of the requirement and/or its major status).

Wherever emissions estimates are needed (unless the source independently decides to more accurately estimate emissions), use of available information should suffice. Any information that is sufficient to support a reasonable belief as to compliance or the applicability or non-applicability of requirements will be acceptable for these purposes. That could include AP-42 emission factors, emissions factors in other EPA documents, or reasonable engineering projections, as well as test data (see Section C. Quality of Required Information).

Any required tpy estimates are not to be included as federally-enforceable part 70 permit terms, unless otherwise required by an applicable requirement or requested by the source to avoid one. In addition, where tpy descriptions are needed, EPA does not believe that part 70 requires multiple forms of emissions estimates (i.e., actual allowable, and potential emissions). Also, where an emissions estimate is needed for part 70 purposes but is otherwise available (e.g., recent submittal of emissions inventory), then the permitting authority can allow the source to cross-reference this information for part 70 purposes.

Even if tpy estimates are not necessary, part 70 applications must describe all significant emissions units, including any which are not subject to any applicable requirement at any given emissions unit. Such unregulated emissions can include hazardous air pollutants (HAP) listed under section 112(b) of the Act and criteria pollutants that are unregulated for a particular emissions unit. A general description of emissions (i.e., simple identification of the significant pollutant or family of pollutants believed to be emitted by the emissions unit) should suffice. For part 70 purposes, the descriptions of emissions units themselves also can be quite general (i.e., descriptions need not contain information such as UTM coordinates or model and serial numbers for equipment, unless such information is needed to determine the applicability of, or to implement, an applicable requirement). Negative declarations are not required for pollutants that are not emitted by the emissions unit.

Some examples may help to illustrate where only source descriptions of regulated and unregulated emissions are necessary for title V purposes:

- An application for a de-greaser subject to a requirement to have a certain type of lid could describe the relevant applicable requirement and simply identify that it emits volatile organic compounds (VOC) and falls within the scope of the regulation. Quantification of the VOC emissions would not be necessary since the level of emissions is not relevant to the standard.

- An application for a storage tank subject to a requirement to have a certain type of seal, in addition to describing this requirement, would only need to generally identify the types of pollutants emitted, such as VOC and HAP generally.

- An application for a boiler that is grandfathered under the SIP could just identify that PM, SO2, NOx, VOC, lead, and HAP are emitted and that no applicable requirement is relevant.

3. Insignificant Activities

Section 70.5(c) allows the Administrator to approve as part of a State program a list of insignificant activities which need not be included in permit applications. For activities on the list, applicants may exclude from part 70 permit applications information that is not needed to determine (1) which applicable

requirements apply, (2) whether the source is in compliance with applicable requirements, or (3) whether the source is major. If insignificant activities are excluded because they fall below a certain size or production rate, the application must describe any such activities at the source which are included on the list. Even for such insignificant activities, the process for listing them in the application can be fairly simple. The permitting authority could allow the source merely to list in the application the kinds of insignificant activities that are present at the source or check them off from a list of insignificant activities approved in the program.

In addition to the insignificant activity provisions of § 70.5(c), there is flexibility inherent in § 70.5 to tailor the level of information required in the application to be commensurate with the need to determine applicable requirements. The EPA believes this inherent flexibility encompasses the idea that certain activities are clearly trivial (i.e., emissions units and activities without specific applicable requirements and with extremely small emissions) and can be omitted from the application even if they are not included on a list of insignificant activities approved in a State's part 70 program pursuant to § 70.5(c). Attachment A lists examples of activities which EPA believes should normally qualify as trivial in this sense. This list is intended only as a starting point for States to consider. The determination of whether any particular item should be on the State's trivial list may depend on State-specific factors (e.g., whether the activity is subject to the requirements of the SIP). Permitting authorities can also allow, on a case-by-case basis without EPA approval, exemptions similar to those activities identified in Attachment A. Additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to State lists of insignificant activities.

4. Generic Grouping of Emissions Units and Activities

Questions have arisen regarding whether emissions units and activities may be treated generically in the application and permit for certain broadly applicable requirements often found in the SIP. Examples of such requirements brought to EPA's attention include requirements that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., process weight requirements). These requirements are sometimes referred to as "generic," because they apply and are enforced in the same manner for all subject units or activities.

These requirements can normally be adequately addressed in the permit application with minimal or no reference to any specific emissions unit or activity, provided that the scope of the requirement and the manner of its enforcement are clear. Even where such generic requirements attach to individual small emissions units or activities, requiring a unit-by-unit or activity-by-activity description of numerous units or activities would generally impose a paperwork burden that would not be compensated by any gain in the practical enforceability of such relatively simple requirements. Therefore, provided the applicant documents the applicability of these requirements and describes the compliance status as required by § 70.5(c), the individual emissions units or activities may be excluded from the application, provided no other requirement applies which would mandate a different result. Similarly, the part 70 permit which must assure compliance with the generic applicable requirement would be written without specificity to applicable emissions units or activities.

In EPA's view, the validity of this approach stems from the nature of these applicable requirements. Accordingly, EPA believes application of this principle for grouping subject activities together generically should not depend on whether those activities qualify as trivial or insignificant. Where the applicable requirement is amenable to this approach, that is, where (1) the class of activities or emissions units subject to the requirement can be unambiguously defined in a generic manner and where (2) effective enforceability of that requirement does not require a specific listing of subject units or activities, permitting authorities may follow this approach regardless of whether subject activities have been listed as trivial or insignificant.

A lengthy list of the types of requirements suitable for this treatment is not possible here because, among other reasons, the examples of which EPA is aware are SIP requirements, and so vary from State to State. Permitting authorities are in the best position to decide which SIP requirements can be treated in this generic fashion. However, permitting authorities may wish to consult with the EPA Regional office in advance to clarify any uncertainties.

5. Short-term Activities

States can treat many short-term activities (e.g., activities occurring infrequently and for a short duration at a part 70 source) subject to an applicable requirement in the same fashion as activities subject to a generic requirement (see previous discussion). Since these activities are not present at

the source during preparation of the permit, the most that can be expected is generic treatment in the application. For such activities, the application and permit would not include emissions unit specificity but instead would contain a general duty to meet all applicable requirements that would apply to any qualifying short-term activity. Short-term activities which are not subject to an applicable requirement should be classified as insignificant activities or would qualify as trivial, and so would not be included in either the part 70 application or permit.

For example, a contractor-run sandblasting operation that is subject to a SIP limit for particulate matter might be operated on an infrequent but recurring basis might qualify for the general duty approach. However, where such activities re-occur with considerable frequency, the permitting authority could require them to be included in the permit. The source would also be obligated to revise the permit if operation of any short-term activity would be in conflict with the permit. If short-term construction activities occur, the part 70 permit application would need to address them only if they are subject to the State's NSR program or are otherwise in conflict with the envisioned part 70 permit.

6. Determination of Applicable SIP Requirements

One of the undisputed challenges facing both State and the regulated community in their efforts to develop complete applications is the determination of the applicable SIP requirements for a part 70 source. In some situations, it may be difficult to identify all the requirements in the SIP which are applicable to a particular source. Applicants, after consultation with the permitting authority, should include in permit applications the State rules which, to the best of their knowledge, are in the SIP. A good faith estimate will be enough to support both a valid compliance certification and a "completeness" determination. Review by the permitting authority, EPA, and the public may provide additional insight into whether any other applicable requirements exist. Any additions should not affect the validity of the original permit application and its eligibility for the application shield or of the accompanying compliance certification. However, the source would have to update its certification to account for any subsequently identified SIP requirements.

At least one State has developed a checklist of its air rules and required the applicant to check off which ones apply and select appropriate codes for rationalizing which ones do not apply. This type of approach should aid the source in providing

in the part 70 application its understanding of what applicable requirements apply. Sources in such a State may rely on the checklist. The EPA has also provided a contractor to document the approved SIP for each State. Where an EPA compilation exists, sources may rely on it as well. This process is well underway for most States and permitting authorities and, in many cases, EPA Regional Offices can provide the rule citation of the State rules that have been approved as part of the SIP.

Where a State has adopted a rule that is pending approval by EPA into the SIP, sources (if advised by the permitting authority) could in their applications note that the corresponding State-only requirements will become federally enforceable upon SIP approval. The permitting authority during review of the application would be responsible for determining if the SIP had been approved. If so, then the permitting authority would incorporate the requirements into the federally-enforceable portion of the permit. If the requirements had not been approved into the SIP, the permitting authority could incorporate the pending requirements into the State-only enforceable portion of the permit and note that the requirements would become federally enforceable upon SIP approval. The federally-enforceable portion of the permit would include the existing SIP requirements and condition them to expire upon EPA approval of the SIP revision. Once the SIP revision is approved, the pending permit terms would become federally-enforceable and the permit terms based on the superseded SIP rule would become void.

7. Incorporation of Prior NSR Permit Terms and Conditions

This paper provides guidance to States and sources in devising a means to revise NSR permit terms as appropriate (including classification as a State-only enforceable term) in conjunction with the part 70 permit issuance process. As used here, "new source review" refers to all forms of preconstruction permitting under programs approved into the SIP, including minor and major NSR (e.g., prevention of significant deterioration). Section 70.2 defines any term or condition of a NSR permit issued under a Federal or SIP-approved NSR program as being an applicable requirement. The Agency has concluded, however, that only environmentally significant terms need to be included in part 70 permits. The EPA recognizes that NSR permits contain terms that are obsolete, extraneous, environmentally insignificant, or otherwise not required as part of the SIP or a federally-enforceable NSR program. Such terms, as subsequently explained, need not be incorporated into the part 70 permit to fulfill the purposes of the NSR and title V programs required under the Act.

Minor NSR, in particular, is a program which the State has discretion to mold as necessary to be consistent with the goals of the SIP. Therefore, the permitting authority has very broad discretion in determining the terms of minor NSR. This discretion also exists to a much lesser extent in crafting major NSR permits, since the Act and EPA regulations contain several express requirements for review of major subject sources. Many NSR permit terms written in the past for both minor and major NSR, however, were understandably not written with a view toward careful segregation of terms implementing the Act from State-only requirements.

The EPA believes that the part 70 permit issuance process, involving as it does review by the permitting authority, public, and EPA, presents an excellent opportunity for the permitting authority to make appropriate revisions to a NSR permit[2] contemporaneously with the issuance of the part 70 permit. The public participation procedures for issuance of a part 70 permit satisfy any procedural requirements of Federal law associated with any NSR permit revision. This parallel processing approach is also an excellent opportunity to minimize the administrative burden associated with such an exercise. By conducting a simultaneous revision to the NSR permit, the permitting authority would be revising the "applicable NSR requirement" for purposes of determining what must be included in the part 70 permit.

There are several factors which bound the available discretion of the permitting authority in deciding whether an NSR permit term is necessary and must be incorporated into the part 70 permit as a federally-enforceable condition. Certainly all NSR terms must be incorporated which are mandatory under EPA's governing regulations (e.g., best available control technology, lowest achievable emissions rate, and other applicable NSR emission limits), or are not mandatory under EPA regulations but are expressly required under the terms of the State's NSR program (e.g., new source performance standards (NSPS) and SIP emission limits, reporting and recordkeeping requirements[3]), or are voluntarily taken by the source to avoid

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[2]In many States, an NSR permit is subsequently converted to an operating permit leaving the preconstruction permit void. In other States, there is not a separate construction permit (i.e., single permit system). In either case the phrase "NSR permit" means the current permit in which the NSR applicable requirements reside.

[3]This does not preclude the possibility that certain federally-enforceable limits incorporated into the NSR permit may

an otherwise applicable requirement (e.g., emission limits used to create a "synthetic minor" source, to "net out" of major NSR, or to create tradeable offsets or other emission reduction credits).

On the other hand, other NSR permit terms and conditions may be patently obsolete and no longer relevant to the operation of the source, such as terms regulating construction activity during the building or modification of the source, where the construction is long completed and the statute of limitations on construction-phase activities has run out. These terms no longer serve a Federal purpose and need not be included as terms of the part 70 permit. Likewise, the State will also need to identify provisions from NSR permits that are not required under Federal law because they are unrelated to the purposes of the NSR program. Examples typically include odor limitations, and limitations on emissions of hazardous air pollutants where such limitations do not reflect a section 112 standard or a SIP criteria pollutant requirement. Where the State retains such conditions, it would draft the part 70 permit to specify that they are State-only conditions and incorporate them into the part 70 permit as such.

New source review permits are also likely to contain other terms that are not patently obsolete or irrelevant, but that the source and permitting authority agree are nevertheless extraneous, out-dated, or otherwise environmentally insignificant and inappropriate for inclusion in a federally-enforceable permit. Candidates for this exclusion include: (1) information incorporated by reference from an application for a preconstruction permit (to the extent this information is needed to enforce NSR permit terms it should be converted to terms in the part 70 permit), or (2) original terms of a preconstruction permit that has been superseded by other terms related to operation. The propriety of excluding other types of NSR permit terms will need to be evaluated on a case-by-case basis.

The EPA believes that the above parallel processing approach should be effective in most situations to incorporate the federally significant NSR permit terms into the part 70 permit in an efficient and workable way. However, the Agency recognizes that sources and permitting authorities may experience serious burden and timing concerns in accomplishing this process. Therefore, the Agency recommends the following approach, which

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qualify for generic treatment in the application and the permit as described in Section 4. Generic Grouping of Emissions Units and Activities.

EPA believes is consistent with the current part 70 rule. Under this approach, sources may in their part 70 permit applications, propose candidate terms from their current NSR permits which they reasonably believe should be considered for revision, deletion, or designation as being enforceable only by the State. Upon submittal of the application, the source would, as a Federal matter, only need to certify compliance status for those remaining NSR terms that it had earmarked for incorporation into the part 70 permit as federally-enforceable terms. The permitting authority, as part of the collaborative part 70 permit issuance process, would review the list of terms recommended in good faith by the source for deletion, revision, or State-only status and would ultimately agree or disagree with the source's proposal. Where the permitting authority decided that terms beyond those proposed as federally enforceable by the source should be retained to implement NSR, the source would be required to re-certify its application with respect to those NSR terms. Failure to do so within the timeframe required by the permitting authority would result in an inaccurate certification and the loss of the application shield.

The resolution of which NSR terms are to be incorporated should ideally be completed by the time of initial part 70 permit issuance. However, the resources available for timely issuance of thousands of part 70 permits may not be sufficient to achieve final resolution of NSR permit terms by permit issuance. Serious concerns have been raised by industry that they should not be subject to premature incorporation of these remaining permit terms into the part 70 permit. They believe that this could trigger, in many cases, inappropriate part 70 responsibilities (e.g., monitoring, reporting, and recordkeeping) for these terms.

The EPA believes that the current part 70 rule allows permitting authorities to address these concerns as well. Where States wish to extend the time in which to decide whether to revise, delete, or designate as State-only certain terms of current NSR permits, permitting authorities may stipulate in initial part 70 permits that any of those NSR terms so listed in the permit will be reviewed and be deleted, revised, or incorporated as federally-enforceable terms of the part 70 permit on or before a specified deadline (not later than the renewal of the permit). Prior to the deadline, the permitting authority would delete, revise, or make federally enforceable any terms that the State determined warranted such treatment. In the meantime, all other terms would continue to be enforceable under State law as terms of the NSR permit. The permitting authority would incorporate any NSR permit terms that were not deleted or designated as State-only into the federally enforceable portion of the part 70 permit consistent with its approved part 70 permit

revision procedures.

Finally the permitting authority may be required to add new terms to the part 70 permit to make any incorporated NSR permit terms enforceable from a practical standpoint, to reflect operation rather than construction, or to meet other part 70 requirements regarding the content of permits. Where a permitting authority has already converted the NSR permit into an existing State operating permit before incorporation into the part 70 permit, the terms of the current permit to operate will presumptively define how NSR permit terms should be incorporated into part 70 permits.

8. Section 112(r) Requirements

For sources otherwise required to obtain a part 70 permit, complete applications merely need to acknowledge (where appropriate) that the on-site storage and processing of section 112(r) chemicals may require the source to submit a section 112(r) risk management plan (RMP) when that requirement becomes applicable. This acknowledgment should be based on the "List of Regulated Substances and Their Thresholds" rule [59 FR 4478 (January 14, 1994)]. Sources are not required to quantify emissions of these substances (unless they are also pollutants listed under section 112(b), and such quantification is needed for fee collection purposes). To resolve issues of applicability, permitting authorities may ask for additional information from certain sources regarding materials stored and transferred and the amounts of chemicals used in certain processes if the source does not indicate its potential applicability with respect to the section 112(r) requirement to file an RMP.

9. Research and Development Activities

The EPA expects that R&D activities will generally be exempt from part 70 and not be involved in the part 70 application process since they are typically independent, non-major sources. The July 1992 part 70 preamble provided general guidance explaining that R & D activities could often be regarded as separate "sources" from any operation with which it were co-located (57 FR 32264 and 32269). The Agency is clarifying and confirming their substantial flexibility under the ongoing rulemaking action to revise part 70.

Some R&D activities can still be subject to part 70 because they are either individually major or a support facility making significant contributions to the product of a collocated major manufacturing facility. In addition, laboratory activities which

involve environmental and quality assurance/quality control sample analysis, as well as R&D, present similar permitting problems. Such activities should be eligible for classification as an insignificant activity if there are no applicable SIP requirements. Where applicable SIP requirements do apply, they typically consist of "work practice" (e.g., good laboratory practice) requirements. In this situation, permit applications would need to contain only statements acknowledging the applicability of, and certifying compliance with, these work practice requirements. There is no need for an extensive inventory of chemicals and activities or a detailed description of emissions from the R&D or laboratory activity. Similarly, there would be no need to monitor emissions as a part 70 permit responsibility.

10. Applications from Non-major Sources

Applications for non-major sources subject to part 70 can be less comprehensive than those for major sources. (Note that virtually all States have deferred the applicability of these sources as provided by part 70.) While permits for major sources must include all applicable requirements for all emissions units at the source, § 70.3(c)(2) stipulates that permits for non-major sources have to address only the requirements applicable to emissions units that cause the source to be subject to part 70 (e.g., requirements of sections 111 or 112 of the Act applicable to non-major sources). Other emissions units at non-major sources that do not trigger part 70 applicability, even if they are subject to applicable requirements, do not have to be included in the permit. Since permits for non-major sources do not have to include applicable requirements for emissions units that do not cause the source to be subject to part 70, no information on those units is needed in the permit application.

11. Supporting Information

The great majority of the detailed background information relied upon by the source to prepare the application need not be included in the application for it to be found complete. Even though certain emissions-related calculations [see § 70.5(c)(3)(viii)] are required, the application size can still be significantly reduced if the permitting authority allows the source to submit examples of calculations performed that illustrate the methodology used. Cost savings can be realized, even though the calculations are still performed, in that the efforts to exhaustively record them in the application can be omitted.

The permitting authority can request additional, more

detailed information needed to justify any questionable information or statement contained in the initial application or to write a comprehensive part 70 draft permit. Applications for permits which will establish a requirement uniquely found in the part 70 permit (such as an alternative reasonably available control technology (RACT) limit) would require more supporting information, including any required demonstration.

C. Quality of Required Information

The quality of emissions estimates where they are needed in the part 70 permit application depends on the reasonable availability of the necessary information and on the extent to which they are relied upon by the permitting authority to resolve disputed questions of major source status, applicability of requirements, and/or compliance with applicable requirements. In general, where estimates of emissions are necessary, reasonably-available information may be used.

Generally, the emissions factors contained in EPA's publication AP-42 and other EPA documents may be used to make any necessary calculation of emissions. When an acceptable range of values is defined for a general type of source situation, permitting authorities have considerable discretion to define the appropriate emissions factor value within that range. States are most often better able to make such decisions given their closer proximity to the particular source and its operation.

For purposes of certifying the truth and accuracy of the application, part 70 requires that emissions estimates be expressed in terms consistent with the applicable requirement. This does not mean that only test data is acceptable. Rather, the source may rely on any data using the same units and averaging times as in the test method. New testing is not required and emission factors are presumed to be acceptable for emissions calculations, but more accurate data are preferred if they are readily available. Emissions factors provided by permitting authorities are also allowed where EPA emission factors are missing or State or industry values provide greater accuracy. The applicant may also use other estimation methods (materials balance, source test, or continuous emissions monitoring (CEM) data) when emission estimates produced through the use of emission factors are not appropriate.

In disputed cases, the source may propose the least costly alternative estimation method as long as it will produce acceptable data. Owners and operators may propose use of emissions estimation methods of their choosing to the permitting authority when the resulting data is more accurate than that

obtained through the use of emissions factors. Sources are encouraged to contact the permitting authority to discuss the appropriate estimation techniques for a particular circumstance.

Emissions estimates when they are necessary for HAPs often become less precise below certain thresholds. The need for quantification or even estimation should therefore decrease the lower the levels are that are present. For example, VOC estimates based on manufacturer's safety data sheets may indicate that trace amounts of certain HAPs may be present. It is reasonable for the source to report these HAPs as present in trace amounts and not quantify them further or perform expensive testing procedures to collect more accurate data, unless the permitting authority requires otherwise. On the other hand, more precise estimates might be required to defend a position that a VOC source was below emissions cutoffs which subject it to a RACT requirement if the source appeared close to that threshold and it exact emissions level was in doubt.

D. Phase-In of Details for Completeness Determinations

Permitting authorities have considerable flexibility in processing the expected huge volume of permit applications so as to issue initial permits by the required deadline of 3 years after program approval. The § 70.5(c) requirement that a permit application will be complete only if it addresses all the information required in this section must be interpreted in light of the July 1992 preamble (which clarifies the § 70.5(c) requirement for completeness in terms of information needed by the permitting authority to begin processing of an application). Accordingly, the permitting authority may balance the need for information to support timely permit issuance pursuant to the schedule approved in the program against the workload associated with managing and updating as necessary the initially submitted information.

Sources must submit complete applications within 12 months of the effective date (i.e., 30 days after the Federal Register date where EPA approves the program) of a State part 70 program or on whatever schedule for application submittal the State establishes in its approved program for its sources. Permitting authorities may also require application submittals prior to part 70 program approval under State authority, however, a failure to comply with any application deadline earlier than the effective date for the program cannot be considered a violation of the Act.

The current rule allows permitting authorities to implement a two-step process for application completeness, first

determining an application to be administratively complete, then requiring application updates as needed to support draft permit preparation. For example, permitting authorities can initially find an application complete if it defines the applicable requirements, and major/minor source status; certifies compliance status with respect to all applicable requirements (subject to the limitation on this action provided for in Section H. Compliance Certification Issues); and allows the permitting authority to determine the approved permit issuance schedule. The application must also include a certification as to its truth, accuracy, and completeness. In any event, permitting authorities must award the application shield if the source submits a timely application which meets the criteria for completeness in § 70.5(c).

Under this approach, if the source has supplied at least initial information in all the areas required by the permit application form and has certified it appropriately, the permitting authority generally has flexibility to judge the application to be complete enough to begin processing. Accordingly, there should normally be no need for an applicant to submit an application many days in advance in order to build in extra time for an iterative process before the relevant submittal deadline. Sources scheduled for permitting during the first year of the transition schedule must submit any additional information as needed to meet fully the requirements of § 70.5(c) for completeness on a more immediate schedule so that their permit can be issued within that first year.

E. Updates to Initially Complete Applications Due to Change

Sources, to maintain their application's status as complete and therefore preserve the application shield, must respond to requests from the permitting authority for additional information to determine or evaluate compliance with applicable requirements within the reasonable timeframe established by the permitting authority. Where more information is needed in the permit application to continue its processing, permitting authorities may opt to add the additional information to the application themselves or require additional submittals from the source. Sources must promptly certify any additional information submitted by them and certify or revise any relevant information furnished by the permitting authority.

1. Changing Emissions Information

Updates to the initially complete application may be required if emissions information, such as revised emissions factors, changes or additional NSR projects are approved after an

application is submitted. The exact response required will depend in part on whether the change affects a source's applicable requirements or its compliance status and when it is discovered. If, after consultation with the permitting authority, it is determined that the applicability status of the source is affected by new emissions information (e.g., the change causes the source to become newly subject to applicable requirements or may affect its ability to comply with a current NSR permit condition), then the source must promptly submit the new information to the permitting authority, identify any new requirements that apply, and certify any change in the source's compliance status. The issuance of an NSR permit may also add a new applicable requirement that would need to be addressed by the part 70 permit.

If the new information is discovered before the draft permit has been issued, it should be submitted as an addendum to the application, and the draft permit should reflect the new information. The permitting authority and a source can agree on set intervals at which such updating is required in order to structure the process and make it more efficient. If new information is discovered after the draft permit has completed public review but before the proposed permit has been issued, the information should still be submitted, and it is the responsibility of the permitting authority to revise the permit accordingly.

If new information is discovered after the permit has been issued, the resulting change could, at the discretion of the permitting authority, be addressed as a permit revision or as a reopening. If the change would not allow a source to comply with its current permit, the source should initiate a permit revision.

If the information does not affect applicability of, or compliance with, any applicable requirement (e.g., only alters the tpy emissions estimates of regulated pollutants), the information need not be submitted until permit renewal. If the permitting authority requires submittal of new information earlier, however, then it must be submitted according to reasonable deadlines established by the permitting authority.

2. Other Changes

Other changes can also occur that would require the source, even absent a specific request from the permitting authority, to propose an update to an initially complete application. One example is where a new regulatory requirement becomes applicable to the source before the permit is issued.

F. Content Streamlining

1. Cross Referencing

The permitting authority may allow the application to cross-reference previously issued preconstruction and part 70 permits, State or local rules and regulations, State laws, Federal rules and regulations, and other documents that affect the applicable requirements to which the source is subject, provided the referenced materials are currently applicable and available to the public. The accuracy of any description of such cross-referenced documents is subject to the certification requirements of part 70. Such documents must be made available as part of the public docket on the permit action, unless they are published and/or are readily available (e.g., regulations printed in the Code of Federal Regulations or its State equivalent). In addition, materials that are available elsewhere within the same application can be cross referenced to another section of the application.

In many cases, incorporation of prior information from previously issued permits would be useful. Examples are where a source is updating a part 70 permit by referencing the appropriate terms of a NSR permit or renewing a part 70 permit by referencing the current permit and certifying that no change in source operation or in the applicable requirements has occurred. Even where existing permit conditions are expressed in terminology other than that used in the part 70 permit, cross-referencing can still be possible. Such citations, however, would have to provide sufficient translations of terms to ensure the same effect.

As discussed previously, the permitting authority may determine that certain terms and conditions of existing NSR permits are obsolete, environmentally insignificant, or not germane with respect to their incorporation into part 70 permits. Even when a NSR permit contain such terms, citation can still be used to the extent that the NSR permit provisions appropriate for part 70 permit incorporation are clearly identified through the cross-reference. Also, the NSR permit terms not cited for part 70 incorporation are still in effect as a matter of State law unless and until expressly deleted by the permitting authority. Wherever this citation approach is used, the permitting authority should review all referenced terms to ensure they meet part 70 requirements for enforceability.

The EPA believes that one reason for the excessive length and cost of some permit applications is that sources believe they are required to paraphrase or re-state in their entirety the

provisions of the Code of Federal Regulations (CFR) or other repositories of applicable requirements. Citations can be used to streamline how applicable requirements are described in an application and will also facilitate compliance by eliminating the possibility that part 70 permit terms will conflict with underlying substantive requirements. Indeed, many States have taken a citation-based approach as a way of streamlining applications and permits. Thus, a source could cite, rather than repeat in its application, the often extensive details of a particular applicable requirement (including current NSR permit terms), provided that the requirement is readily available and its manner of application to the source is not subject to interpretation. The citation must be clear with respect to limits and other requirements that apply to each subject emissions unit or activity. For example, a storage tank subject to subpart Kb of the NSPS would cite that requirement in its application rather than re-typing the provisions of the CFR.

2. Incorporation of Part 70 Applications by Reference into Permits

The EPA discourages the incorporation of entire applications by reference into permits. The concern with incorporation of the application by reference into the permit on a wholesale basis is the confusion created as to the requirements that apply to the source and the unnecessary limits to operational flexibility that such an incorporation might cause.

If States do incorporate part 70 applications by reference in their entirety into part 70 permits, EPA will consider information in the application to be federally enforceable only to the extent it is needed to make other necessary terms and conditions enforceable from a practical standpoint. Moreover, EPA does not interpret part 70 to require permit revisions for changes in the other aspects of the application.

3. Changing Application Forms

The EPA urges States to re-examine their permit application forms in light of their experience to date and the contents of this guidance. Although the revision of an application form requires a program revision when it impacts any portion of the form which was relied upon by EPA in approving the part 70 program for the State, such a revision can, in most cases, be accomplished through an exchange of letters with the appropriate EPA Regional Office. Changes made to implement this guidance can be effected immediately with implementing documents sent to the appropriate EPA Regional Office. Similarly, a State could notify the Regional Office in writing that the State intends to

make completeness determinations based on completion of parts of the existing forms to avoid costly changes in computerized form systems that have already been developed. This is another way that a State can act quickly to streamline application requirements while minimizing its own administrative burdens.

G. Responsible Official

Part 70 provides that a "responsible official" must perform certain important functions. In general, responsible officials must certify the truth, accuracy, and completeness of all applications, forms, reports, and compliance certifications required to be submitted by the operating permits program [§ 70.5(d)]. As an example, a responsible official must certify the truth, accuracy, and completeness of all information submitted as part of a permit application [§ 70.5(a)(2)] and that the source is in compliance "with all applicable requirements" under the Act [§ 70.5(c)(9)(i)]. In addition, part 70 requires responsible officials to certify monitoring reports, which must be submitted every 6 months, and "prompt" reports of any deviations from permit requirements whenever they occur.

The definition of responsible official in § 70.2 identifies specific categories of officials that have the requisite authority to carry out the duties associated with that role. The definition provides in part that the following corporate officials may be a responsible official:

> . . . a president, secretary, treasurer, or vice president or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit . . . . [emphasis added]

Similarly, for public agencies, the definition indicates the following persons may be responsible officials:

> . . . a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency . . . . [emphasis added]

Concerns have been raised over the apparent narrowness of the current definition of responsible official. In the August 1994 Federal Register notice, EPA responded to those concerns

related to acid rain by proposing a revision to the definition of responsible official to allow a person other than the designated representative to be the responsible official for activities not related to acid rain control at affected sources [59 FR 44527].

To respond to further concerns over the definition of responsible official as it applies to partnerships formed by corporations, or partnerships, or a combination of both, EPA confirms that the same categories of officials who can act as responsible officials for corporations can also act in that capacity for partnerships where they carry out responsibilities substantially similar to those in the same categories in corporations. Partnerships that are essentially unions of corporations and/or partnerships will normally have the same management needs as corporations and so will establish a management structure with categories of officials similar to those of most corporations. In these partnerships, the persons with the knowledge and authority to assure regulatory compliance are the officials of the partnership.

Interpreting the definition of responsible official as limiting the class of persons in partnerships that may be responsible officials to general partners would frustrate the intent of the definition because it would in many instances actually result in designating a person that is not in a position to adequately fulfill the role of a responsible official. For this reason, EPA believes it is reasonable for permitting authorities, in the case of partnerships composed of corporations and/or partnerships, to allow for the same flexibility in designating a responsible official as would be the case for corporations.

H. Compliance Certification Issues

To make the required compliance certification to accompany the initial part 70 permit applications, sources are required to review current major and minor NSR permits and other permits containing Federal requirements, SIP's and other documents, and other Federal requirements in order to determine applicable requirements for emission units. The EPA and/or the State permitting authority may request additional information concerning a source's emissions as part of the part 70 application process.

Companies are not federally required to reconsider previous applicability determinations as part of their inquiry in preparing part 70 permit applications. However, EPA expects companies to rectify past noncompliance as it is discovered. Companies remain subject to enforcement actions for any past

noncompliance with requirements to obtain a permit or meet air pollution control obligations. In addition, the part 70 permit shield is not available for noncompliance with applicable requirements that occurred prior to or continues after submission of the application.

ATTACHMENT A

LIST OF ACTIVITIES THAT MAY BE TREATED AS "TRIVIAL"

The following types of activities and emissions units may be presumptively omitted from part 70 permit applications. Certain of these listed activities include qualifying statements intended to exclude many similar activities.

Combustion emissions from propulsion of mobile sources, except for vessel emissions from Outer Continental Shelf sources.

Air-conditioning units used for human comfort that do not have applicable requirements under title VI of the Act.

Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.

Non-commercial food preparation.

Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

Janitorial services and consumer use of janitorial products.

Internal combustion engines used for landscaping purposes.

Laundry activities, except for dry-cleaning and steam boilers.

Bathroom/toilet vent emissions.

Emergency (backup) electrical generators at residential locations.

Tobacco smoking rooms and areas.

Blacksmith forges.

Plant maintenance and upkeep activities (e.g., grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots) provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not

otherwise triggering a permit modification.[1]

Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or de-greasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.

Portable electrical generators that can be moved by hand from one location to another[2].

Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.

Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals.[3]

Air compressors and pneumatically operated equipment, including hand tools.

Batteries and battery charging stations, except at battery manufacturing plants.

Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP.[4]

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[1]Cleaning and painting activities qualify if they are not subject to VOC or HAP control requirements. Asphalt batch plant owners/operators must still get a permit if otherwise required.

[2]"Moved by hand" means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device.

[3]Brazing, soldering and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are more appropriate for treatment as insignificant activities based on size or production level thresholds. Brazing, soldering, welding and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this appendix.

[4]Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids should be based on size limits

Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

Equipment used to mix and package, soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

Drop hammers or hydraulic presses for forging or metalworking.

Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

Vents from continuous emissions monitors and other analyzers.

Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation.

Equipment used for surface coating, painting, dipping or spraying operations, except those that will emit VOC or HAP.

CO_2 lasers, used only on metals and other materials which do not emit HAP in the process.

Consumer use of paper trimmers/binders.

Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

Laser trimmers using dust collection to prevent fugitive emissions.

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such as storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list.

Bench-scale laboratory equipment used for physical or chemical analysis, but not lab fume hoods or vents.[5]

Routine calibration and maintenance of laboratory equipment or other analytical instruments.

Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

Hydraulic and hydrostatic testing equipment.

Environmental chambers not using hazardous air pollutant (HAP) gasses.

Shock chambers.

Humidity chambers.

Solar simulators.

Fugitive emission related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

Process water filtration systems and demineralizes.

Demineralized water tanks and demineralizer vents.

Boiler water treatment operations, not including cooling towers.

Oxygen scavenging (de-aeration) of water.

Ozone generators.

Fire suppression systems.

Emergency road flares.

Steam vents and safety relief valves.

Steam leaks.

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[5]Many lab fume hoods or vents might qualify for treatment as insignificant (depending on the applicable SIP) or be grouped together for purposes of description.

Steam cleaning operations.

Steam sterilizers.

Burgos, Alexander N

Subject: FW: EMC - 15A NCAC 02Q

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Tuesday, December 10, 2024 4:02 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: EMC - 15A NCAC 02Q

Thanks Mr. Wiggs,

Completely understand. Barring any other unexpected delays are on our end, we plan to get this to you by COB Thursday.

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

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From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Tuesday, December 10, 2024 3:37 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: EMC - 15A NCAC 02Q

Ms. Everett,

As you know, the RRC meeting is about 10 days sooner this month due to the holidays. It may be necessary for me to request an extension at the meeting. This will depend on when your agency replies to my requests for changes and whether the final revised rule complies with the standards in 150B-21.9.

Thank you.

Travis C. Wiggs
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Tuesday, December 10, 2024 3:20 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: EMC - 15A NCAC 02Q

Dear Mr. Wiggs,

Staff have been working to address your technical change requests which are due to you today. We encountered an unexpected delay and while most of the comments have been addressed, we are requesting to have this back to you by the end of the day on this Thursday. Does this work with your schedule?

Thank you,

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules

Burgos, Alexander N

From: Wiggs, Travis C
Sent: Friday, November 22, 2024 12:15 PM
To: Everett, Jennifer; Quinlan, Katherine L
Cc: Burgos, Alexander N
Subject: December 2024-Request for Technical Changes
Attachments: 12_2024-Environmental Management Commission-Request for Changes.docx

Good afternoon,

I'm the attorney who reviewed the Rule submitted by the Environmental Management Commission for the December 2024 RRC meeting. The RRC will formally review this Rule at its meeting on Thursday, December 19, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, please let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rule to me via email, no later than 5 p.m. on December 10, 2024. Let me know if you have any questions.

Thank you.

Travis C. Wiggs
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov