

CHAPTER 3 OPERATING PERMITS AND ACID RAIN PROGRAMS**Section**

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300 APPLICABILITY

300.1 Except as exempted from the requirement to obtain a permit under § 300.2 and elsewhere herein, the following sources shall be subject to the permitting requirements under this chapter. In the event that this chapter conflicts or is inconsistent with other requirements of this subtitle, this chapter shall supersede for sources subject to its provisions:

- (a) Any major source;
- (b) Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the Act;
- (c) Any source, including an area source, subject to a standard or other requirement under § 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under § 112(r) of the Act;
- (d) Any affected source; and
- (e) Any source in a source category designated by the Administrator pursuant to 40 CFR § 70.3.

300.2 The following source category exemptions shall apply:

- (a) All sources listed in § 300.1 that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to § 129(e) of the Act, are exempt from the obligation to obtain a Part 70 permit unless required to do so under applicable requirements, or future rulemaking by the Administrator. Any such exempt source may apply for a permit under this chapter:
- (b) If the Administrator decides to terminate the exemption of certain nonmajor sources when adopting standards or other requirements under §§ 111 or 112 of the Act after July 21, 1992, the nonmajor sources shall become subject to

the permitting requirements in accordance with the standard or other requirement adopted by the Administrator.

- (c) Sources in the following source categories shall be exempted from the obligation to obtain a Part 70 permit:
 - (1) All sources in source categories that would be required to obtain a permit solely because they are subject to Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and
 - (2) All sources in source categories that would be required to obtain a permit solely because they are subject to Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

300.3 The emission units covered in a Part 70 permit shall be determined as follows:

- (a) For major sources, the permit shall include all applicable requirements for all relevant emissions units in the major source. For purposes of this section, the term “relevant emissions units” shall mean only those emissions units that are subject to applicable requirements; and
- (b) For any nonmajor source subject to this rule under § 300.1 and not exempt under § 300.2, the permit shall include only the applicable requirements which apply to emissions units that cause the source to be subject to the requirement to obtain a permit under this chapter.

300.4 Fugitive emissions from a covered source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

AUTHORITY: Unless otherwise noted, the authority for this chapter is § 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. 5-230) codified at D.C. Official Code § 8-101.6 (2001); as amended by the Air Pollution Control Act of 1984 National Ambient Air Quality Standards Attainment Amendment Act of 1993, D.C. Law 10-24 (D.C. Act 10-56) published at 40 DCR 5474 (July 30, 1993); and Mayor’s Order 98-44 dated April 10, 1998.

SOURCE: Final Rulemaking published at 40 DCR 8105 (November 19, 1993).

301 PERMIT APPLICATIONS

301.1 For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with the following outline:

- (a) A timely application shall be submitted under the following conditions:
 - (1) Sources that are subject to the operating permit program established

by this chapter as of the date the program is approved by the Administrator, the "effective date," shall file applications on the following schedule:

- (A) Sources that emitted one hundred fifty (150) tons per year or less of regulated pollutants in the aggregate during the previous calendar year shall file complete applications within eight (8) months of the effective date; provided, that upon request and for good cause shown, the Mayor may allow a source additional time up to twelve (12) months from the effective date; and
 - (B) All other sources shall file complete applications within twelve (12) months of the effective date;
- (2) A source that becomes subject to the operating permit program established by this chapter at any time following the effective date shall file a complete application within twelve (12) months of the date on which the source first becomes subject to the program;
 - (3) A source that is required to meet the requirements under § 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of the Act, shall file a complete application to obtain an operating permit or permit amendment or modification within twelve (12) months after commencing operation. Where an existing operating permit would prohibit the construction or change in operation, the source shall obtain a permit revision before commencing operation;
 - (4) Sources subject to this chapter shall file an application for renewal of an operating permit at least six (6) months before the date of permit expiration, unless a longer period (not to exceed eighteen (18) months) is specified in the permit; and
 - (5) Sources required to submit applications for initial phase II acid rain permits shall submit the applications to the Mayor by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides;
- (b) The following procedures shall be followed when Part 70 permit applications are received:
 - (1) Within five (5) days of receipt of an application, the Mayor shall notify the applicant of the date on which the application was received and the date on which the application will automatically be deemed complete unless the Mayor determines otherwise;

- (2) The Mayor shall review each application for completeness and shall inform the applicant within sixty (60) days if the application is incomplete. In order to be complete for purposes of this section, an application shall include a completed application form and, to the extent not called for by the form, the information required in § 301.3. An application shall be considered complete if it contains the information required by the application form and § 301.3;
- (3) If the Mayor does not notify the source within sixty (60) days of receipt that its application is incomplete, the application shall be deemed complete. However, nothing in this subsection shall prevent the Mayor from requesting additional information in writing that is necessary to process the application;
- (4) The Mayor shall maintain a checklist to be used for the completeness determination. A copy of the checklist shall be provided to applicants along with application forms issued by the Mayor;
- (5) If, while processing an application that has been determined or deemed to be complete, the Mayor determines that additional information is necessary to evaluate or take final action on that application, the Mayor may request the additional information in writing. In requesting such information, the Mayor shall establish a reasonable deadline for a response; and
- (6) In submitting an application for renewal of an operating permit issued under this chapter, a source may identify terms and conditions in its previous permit that should remain unchanged and incorporate by reference those portions of its existing permit and the permit application and any permit amendment or modification applications that describe products, processes, operations, and emissions to which those terms and conditions apply. The source shall identify specifically and list which portions of its previous permit or applications are incorporated by reference. In addition, a renewal application shall contain the following:
 - (A) Information specified in § 301.3 for those products, processes, operations, and emissions of the following:
 - (i) That are not addressed in the existing permit;
 - (ii) That are subject to applicable requirements that are not addressed in the existing permit; or
 - (iii) That the source seeks permit terms and conditions that differ from those in the existing permit;

- (B) A compliance plan and certification as required in § 301.3(h); and
 - (C) A compliance certification, as required by § 301.3(i); and
 - (c) If a source submits information to the Mayor under a claim of confidentiality pursuant to § 114(c) of the Federal Clean Air Act (hereafter referred to as “the Act”), the source shall also submit a copy of the information, along with the claim of confidentiality, directly to the Administrator, if the Mayor requests that the source do so. The contents of a Part 70 permit issued under this chapter shall not be entitled to confidential treatment.
- 301.2 Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of the failure or incorrect submittal, promptly submit the supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the applicant filed a complete application but prior to release of a draft permit.
- 301.3 Sources that are subject to the operating permit program established by this chapter shall submit applications on the standard application form that the Mayor provides for that purpose. The application shall include information needed to determine the applicability of any applicable requirement and to evaluate the fee amount required under the schedule approved pursuant to § 305. The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted. The standard application form and any attachments shall require that the following information be provided:
- (a) Identifying information, including company name and address (or plant name and address if different from the company name), owner’s name and agent, and telephone number and names of plant site manager/contact;
 - (b) A description of the source’s processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source; and
 - (c) The following emissions-related information:
 - (1) All emissions of pollutants for which the source is major and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit. The source shall submit additional information related to the emissions of regulated air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees

owed under the fee schedule approved pursuant to § 305;

- (2) Identification and description of all points of emissions described in § 301.3(c)(1) in sufficient detail to establish the basis for fees and applicability of the Act's requirements;
 - (3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any;
 - (4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;
 - (5) Identification and description of air pollution control equipment and compliance monitoring devices or activities;
 - (6) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source;
 - (7) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to § 123 of the Act); and
 - (8) Calculations on which the information in subparagraphs (c)(1) through (c)(7) of this subsection is based;
- (d) The following air pollution control requirements:
- (1) Citation and description of all applicable requirements; and
 - (2) Description of or reference to any applicable test method for determining compliance with each applicable requirement;
- (e) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this chapter or to determine the applicability of the requirements;
- (f) An explanation of any proposed exemptions from otherwise applicable requirements;
- (g) Additional information as determined to be necessary by the Mayor to define alternative operating scenarios identified by the source pursuant to § 302.1(j) or to define permit terms and conditions implementing §§ 302.8 or 302.1(k) of this chapter;

- (h) A compliance plan for all covered sources that contains all the following:
 - (1) A description of the compliance status of the source with respect to all applicable requirements;
 - (2) A description as follows:
 - (A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and
 - (C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with the requirements;
 - (3) A compliance schedule as follows:
 - (A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement; and
 - (C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

- (4) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance under § 301.3(h)(3)(C);
- (5) The compliance plan content requirements specified in this subparagraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations;
- (i) Requirements for compliance certification, including the following:
 - (1) A certification of compliance with all applicable requirements by a responsible official consistent with § 114(a)(3) of the Act and § 301.4 of this chapter;
 - (2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - (3) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement; and
 - (4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act; and
- (j) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

301.4 Any application form, report, or compliance certification submitted pursuant to this chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these operating permit rules shall be signed by a responsible official and shall contain the following language:

“I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.”

301.5 Pursuant to § 300.3, a major source shall receive a permit addressing all applicable requirements for all relevant emissions units in the major source. A major source may comply with this subsection through one of the following methods:

- (a) The source obtains a single permit for all relevant emission units; or
- (b) The source requests and obtains coverage for one or more emission units eligible for coverage under a general permit or permits issued by the Mayor and obtains a separate permit for all remaining emission units not eligible for the coverage.

SOURCE: Final Rulemaking published at 40 DCR 8105, 8107 (November 19, 1993); as amended by Final Rulemaking published at 48 DCR 4479, 4479-4480 (May 18, 2001).

302

PERMIT CONTENT

302.1

Except as provided for in § 300.3(b), every permit issued under these operating permit rules shall include all applicable requirements that apply to the permitted source at the time of issuance. Each permit shall include the following elements:

- (a) The permit shall specify emissions limitations and standards that constitute applicable requirements, and shall include those operational requirements and limitations necessary to assure compliance with all applicable requirements, inclusive of the following:
 - (1) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;
 - (2) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator; and
 - (3) If an applicable requirement allows a source to comply through an alternative emission limit or means of compliance, a source may request that an alternative limit or means of compliance be specified in its permit. An alternative emission limit or means of compliance shall be included in a source's permit upon a showing that it is quantifiable, accountable, enforceable, and based on replicable procedures. The source shall propose permit terms and conditions to satisfy these requirements in its application;
- (b) The permit shall specify a fixed term. The Mayor shall issue permits for any fixed period requested in the permit application, not to exceed five (5) years, except as provided in subparagraphs (1) and (2) of this paragraph:
 - (1) Permits issued to affected sources shall in all cases have a fixed term of five (5) years;

- (2) Permits issued to solid waste incineration units combusting municipal waste subject to standards under § 129(e) of the Act shall have a term not to exceed twelve (12) years. The permits shall be reviewed at least every five (5) years;
- (c) To comply with monitoring and related recordkeeping and reporting requirements the following elements shall be required:
 - (1) Each permit shall contain the following requirements with respect to monitoring:
 - (A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to §§ 114(a)(3) or 504(b) of the Act;
 - (B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to § 302.1(c)(3). The monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subparagraph; and
 - (C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;
 - (2) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:
 - (A) Records of required monitoring information that include the following:
 - (i) The date, place as defined in the permit, and time of sampling or measurements;
 - (ii) The date(s) analyses were performed;
 - (iii) The company or entity that performed the analyses;

- (iv) The analytical techniques or methods used;
 - (v) The results of the analyses; and
 - (vi) The operating conditions as existing at the time of sampling or measurement;
- (B) Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. If appropriate, the permit may specify that records may be maintained in computerized form;
- (3) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:
- (A) A permit issued under this chapter shall require the permittee to submit a report of any required monitoring at least every six (6) months. To the extent possible, the schedule for submission of the reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification;
 - (B) Each report submitted under subparagraph (3)(A) shall identify any deviations from permit requirements since the previous report, and any deviations from the monitoring, recordkeeping and reporting requirements under the permit;
 - (C) In addition to monitoring reports, each permittee shall be required to submit supplemental reports as follows:
 - (i) Any deviation resulting from emergency as defined in § 399.1 shall be reported within two (2) working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under § 302.7;
 - (ii) Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately;

- (iii) Any other deviations that are identified in the permit as requiring more frequent reporting shall be reported on the schedule specified in the permit; and
 - (iv) All reports of deviations shall identify the probable cause of the deviations and any corrective actions or preventative measures taken;
 - (D) Every report submitted under this subsection shall be certified by a responsible official, except that if a report of a deviation required under subparagraph (3)(C) must be submitted within ten (10) days of the deviation, the report may be submitted in the first instance without a certification if an appropriate certification is provided within ten (10) days thereafter, together with any corrected or supplemental information required concerning the deviation; and
 - (E) A permittee may request confidential treatment for information in any report submitted under this subsection pursuant to the limitations and procedures set out in § 301.1(c);
- (d) If the source is required to develop and register a risk management plan pursuant to § 112(r) of the Act, the permit need only specify that it will comply with the requirement to register such a plan. The content of the risk management plan need not itself be incorporated as a permit term;
- (e) The permit shall prohibit emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder:
 - (1) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program; provided, that the increases do not require a permit revision under any other applicable requirement;
 - (2) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement; and
 - (3) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.
- (f) The permit shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;

- (g) The permit shall include provisions stating the following general requirements:
- (1) The permittee must comply with all conditions of the permit. Any noncompliance with the permit constitutes a violation of the Act and this chapter and is grounds for enforcement action or for permit revocation or modification or for denial of a permit renewal application;
 - (2) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;
 - (3) The permit may be reopened or revoked, for cause. Except as provided under § 303.5(b) for minor permit modifications, the filing of a permit reopening, revocation or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;
 - (4) The permit does not convey any property rights of any sort, or any exclusive privilege; and
 - (5) The permittee shall furnish to the Mayor, upon receipt of a written request and within a reasonable time, any information that the Mayor may request to determine whether cause exists for, reopening, or revoking the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Mayor copies of records required to be kept by the permit. The permittee may make a claim of confidentiality pursuant to § 301.1(c) for any information or records submitted under this paragraph;
- (h) The permit shall provide that the permittee will pay fees to the Mayor consistent with the fee schedule established under § 305;
- (i) The permit shall provide that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit;
- (j) The permit shall include terms and conditions which will meet all the applicable requirements and the requirements of this chapter for each of the operating scenarios described in the permit application and eligible for approval. The permit shall authorize the permittee to make changes among operating scenarios authorized in the permit without notice, but shall require the permittee contemporaneously with making a change from one operating

scenario to another to record in a log at the permitted facility the scenario under which it is operating; and

- (k) The terms and conditions for the trading or averaging of emissions shall meet all applicable requirements and the requirements of the operating permits program.

302.2 Each Part 70 permit shall have the following features with respect to enforceability:

- (a) Except as provided in § 302.2(b), all terms and conditions in a permit issued under this chapter, including any provisions designed to limit a source's potential to emit, are enforceable by the Mayor, by the Administrator, and by citizens under the Act; and
- (b) Notwithstanding § 302.2(a), the Mayor shall designate as not being federally-enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its applicable requirements, and such terms and conditions shall not be enforceable by the Administrator and citizens under the Act. Terms and conditions so designated shall not be subject to the requirements of §§ 303 and 304 of this chapter or of 40 CFR Part 70. Terms and conditions designated under this paragraph may be included in an addendum to the source's permit.

302.3 All permits issued under Part 70 shall contain the following elements with respect to compliance:

- (a) Consistent with § 302.1(c), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit under this chapter shall contain a certification by a responsible official as to the results of the required monitoring pursuant to § 301.4;
- (b) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized officials of the Mayor to perform the following:
 - (1) Enter upon the permittee's premises where a source is located or emissions-related activity is conducted, or where records shall be kept under the conditions of the permit;
 - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
 - (3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

- (4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;
- (c) A schedule of compliance to the extent required under § 301.3(h)(3);
- (d) To the extent required under an applicable schedule of compliance and § 301.3(h), progress reports, to be submitted semiannually, or more frequently if specified in the applicable requirement or by the Mayor. The progress reports shall contain the following:
 - (1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when the activities, milestones or compliance were achieved; and
 - (2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;
- (e) Requirements for compliance certification with terms and conditions contained in the permit that are federally-enforceable, including emission limitations, standards, or work practices. Each permit shall specify the following:
 - (1) The frequency (which shall be annually unless the applicable requirement specifies submission more frequently) of submissions of compliance certifications;
 - (2) In accordance with § 302.1(c), a means for monitoring the compliance of the source with emissions limitations, standards, and work practices contained in applicable requirements;
 - (3) A requirement that the compliance certification include the following:
 - (A) The identification of each term or condition of the permit that is the basis of the certification;
 - (B) The permittee's current compliance status;
 - (C) Data and status reports demonstrating whether compliance was continuous or intermittent;
 - (D) The method(s) used for determining the compliance status of the source, currently and over the reporting period as required by § 302.1(c); and

- (E) Any other facts as the Mayor may require to determine the compliance status of the source;
- (4) A requirement that all compliance certifications be submitted to the Administrator as well as to the Mayor;
- (5) Any additional requirements as may be specified pursuant to §§ 114(a)(3) and 504(b) of the Act; and
- (f) Any other provisions as the Mayor may require.

302.4 General permits may be issued under the following circumstances:

- (a) The Mayor may issue a general permit, complying with all requirements applicable to other Part 70 permits, to any source category if the Mayor concludes that the category is appropriate for permitting on a generic basis. No general permit may be issued for affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act;
- (b) A general permit may be issued for a source category based upon an application from a source within the source category or upon the Mayor's own initiative. The Mayor shall, following receipt of an application for a general permit, or upon a determination that issuance of a general permit for a category of sources may be appropriate, follow the same procedures for issuance of a general permit as for any other permit issued under Part 70;
- (c) A general permit may be issued for the following purposes:
 - (1) To establish terms and conditions to implement applicable requirements for a source category;
 - (2) To establish terms and conditions to implement applicable requirements for specified categories of changes to permitted sources;
 - (3) To establish terms and conditions for new requirements that apply to sources with existing permits; and
 - (4) To establish federally-enforceable caps on emissions from sources in a specified category;
- (d) The Mayor may issue a general permit if the Mayor finds the following:
 - (1) There are several permittees, permit applicants, or potential permit applicants who have the same or substantially similar operations,

- emissions, activities, or facilities;
- (2) The permittees, permit applicants, or potential permit applicants emit the same types of regulated air pollutants;
 - (3) The operations, emissions, activities, or facilities are subject to the same or similar standards, limitations, and operating requirements; and
 - (4) The operations, emissions, activities, or facilities are subject to the same or similar monitoring requirements;
- (e) A general permit issued under this section shall identify criteria by which sources may qualify for the general permit. After the Mayor has issued a general permit, the source named in the permit may submit a request for coverage under the permit subject to the following conditions:
- (1) A request for coverage under a general permit shall identify the source and provide information sufficient to demonstrate that the source meets the general permit qualification criteria and that the source is in compliance with the general permit. The request shall provide any additional information the general permit specifies; and
 - (2) A final action approving a request for coverage under a general permit shall not be subject to public comment or judicial review;
- (f) A copy of the general permit, together with a list of sources approved for coverage under it, shall be kept on file for public review;
- (g) A general permit issued under this section shall expressly provide that any source approved for coverage under a general permit shall be entitled to the protection of the permit shield provisions of § 302.6 for all operations, activities, and emissions addressed by the general permit. Notwithstanding the shield provisions of § 302.6, the source shall be subject to enforcement action for operation without a permit if it is subsequently determined that the source does not qualify for the conditions and terms of the general permit; and
- (h) If some, but not all, of a source's operations, activities, and emissions are eligible for coverage under one or more general permits, the source may apply for coverage under the general permits for the operations, activities, and emissions that are so eligible. If the source is required under § 300 to obtain a permit addressing the remainder of its operations, activities, and emissions, it must apply for and receive a permit addressing those items not covered by general permits.

302.5 The Mayor may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

- (a) Conditions that will assure compliance with all applicable requirements at all authorized locations;
- (b) Requirements that the owner or operator notify the permitting authority at least ten (10) days in advance of each change in location; and
- (c) Conditions that assure compliance with all other provisions of this section.

302.6 A permit shield shall apply to a Part 70 source under the following conditions:

- (a) The Mayor may expressly include in a Part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance; provided, that:
 - (1) The applicable requirements are included and specifically identified in the permit; or
 - (2) The Mayor, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary of the determination;
- (b) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield;
- (c) Nothing in this section or in the permit shall alter or affect the following:
 - (1) The provisions of §303 of the Act, including the authority of the Administrator under that section;
 - (2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 - (3) The applicable requirements of the Acid Rain Program, consistent with §408(a) of the Act; or
 - (4) The ability of the Administrator to obtain information from a source pursuant to § 114 of the Act.

302.7 Emergencies shall be provided for in the following manner:

- (a) An emergency constitutes an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions of § 302.7(b) are met;
- (b) The affirmative defense of an emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - (2) The permitted stationary source was at the time being properly operated;
 - (3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
 - (4) The permittee submitted notice of the emergency to the Mayor within two (2) working days of the time when emission limitations were exceeded due to the emergency. The notice shall contain description of the emergency, any steps taken to mitigate emissions, and corrective actions taken pursuant to § 302.1(c)(3)(C)(i) of this section;
- (c) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof; and
- (d) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

302.8

Each permit issued under Part 70 shall provide that a permitted stationary source is expressly authorized to make a § 502(b)(10) change within the stationary source without a permit amendment or permit modification, if the change is not a modification under any provision of Title I of the Act, does not include any change in the date of the source's compliance schedule and the change does not result in a level of emissions exceeding the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions under the following conditions:

- (a) Before making a change under this provision, the permittee shall provide advance written notice to the Mayor and to the Administrator, describing the change to be made, the date on which the change will occur, any changes in emissions, and any permit terms and conditions that are affected including those which are no longer applicable. The permittee shall thereafter maintain a copy of the notice with the permit, and the Mayor shall place a

copy with the permit in the public file. The written notice shall be provided to the Mayor and the Administrator at least seven (7) days before the change is to be made, except that this period may be shortened or eliminated as necessary for a change that must be implemented more quickly to address unanticipated conditions posing a significant health, safety, or environmental hazard. If less than seven (7) days notice is provided because of a need to respond more quickly to the unanticipated conditions, the permittee shall provide notice to the Mayor and the Administrator immediately upon learning of the need to make the change;

- (b) A permitted source may rely on the authority of this section to trade increases and decreases in emissions within the stationary source, where the applicable requirements provide for the emissions trades without a permit revision. In such a case, the advance written notice provided by the permittee shall identify the underlying authority authorizing the trading and shall state when the change will occur, the types and quantities of emissions to be traded, the permit terms or other applicable requirements with which the source will comply through emissions trading, and any other information as may be required by the applicable requirement authorizing the emissions trade;
- (c) The permit shield provided under § 302.6 shall not apply to changes made under this section, except those provided for in § 302.8(d); however, the protection of the permit shield will continue to apply to operations and emissions that are not affected by the changes; provided, that the permittee complies with the terms and conditions of the permit applicable to such operations and emissions. The shield may be reinstated for emissions and operations affected by the change:
 - (1) If subsequent changes cause the stationary source's operations and emissions to revert to those contained in the permit and the permittee resumes compliance with the terms and conditions of the permit; or
 - (2) If the permittee obtains a significant modification to the permit pursuant to § 303.5(d) to codify the change in the permit, and the modified permit expressly provides protection under the shield for the change; and
- (d) Upon the request of a permit applicant, the Mayor shall issue a permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted stationary source solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that assure that the emissions trades are quantifiable and enforceable and comply with all applicable requirements and §§ 302.1 and 302.3. The permit shield under § 302.6 shall apply to

permit terms and conditions authorizing such increases and decreases in emissions. Under this paragraph, the written notification required under this section shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

302.9 Except as provided in §302.9(e), a stationary source may make any change in its operations or emissions that is not addressed or prohibited in its permit, without obtaining an amendment or modification of its permit. The changes shall be subject to the following requirements and restrictions:

- (a) The change shall meet all applicable requirements and may not violate any existing permit term or condition;
- (b) The permittee shall provide contemporaneous written notice of the change to the Mayor and to the Administrator. The written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;
- (c) The change shall not qualify for the permit shield under §302.6;
- (d) The permittee shall keep a record describing all changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes; and
- (e) No permittee may make, without a revision of its permit, a change that is not addressed or prohibited by its permit if such change is subject to any requirements under Title IV of the Act or is a modification under any provision of Title I of the Act.

SOURCE: Final Rulemaking published at 40 DCR 8105, 8114 (November 19, 1993); as amended by Final Rulemaking published at 48 DCR 4479, 4481 (May 18, 2001); and by Final Rulemaking published at 50 DCR 2342 (March 21, 2003).

303 PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS

303.1 The following criteria shall be used in the processing of a permit application:

- (a) Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected State comment, and Administrator's review, that apply to initial permit issuance under §303.1. An application for permit renewal may address only those portions of the permit that require revision, supplementing, or deletion, incorporating the remaining permit terms by reference from the previous permit. The Mayor may similarly, in issuing a draft renewal permit or proposed renewal permit, specify only those portions that will be revised,

supplemented, or deleted, incorporating the remaining permit terms by reference;

- (b) Upon receipt of an application submitted pursuant to §301, the Mayor shall provide notice to the applicant of whether the application is complete. Unless the Mayor requests additional information or otherwise notifies the applicant that the application is incomplete within sixty (60) days of receipt, the application shall be deemed complete;
- (c) Following review of an application submitted in accordance with §301, the Mayor shall issue a draft permit, permit modification, or renewal for public comment. Public participation procedures shall be in accordance with §303.10. The draft shall be accompanied by a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Mayor shall send this statement to the Administrator, to affected States, and to the applicant, and shall place a copy in the public file;
- (d) Following completion of the public comment period, the Mayor shall prepare and transmit to the Administrator a proposed permit, permit modification, or renewal for the following:
 - (1) The proposed permit, modification, or renewal shall be issued no later than fifty (50) days preceding the respective deadlines for permit issuance, modifications and renewals established in this chapter, and shall contain all applicable requirements that have been promulgated and made applicable to the source as of the date of issuance of the draft permit;
 - (2) If new requirements are promulgated or otherwise become newly applicable to the source following the issuance of the draft permit but before issuance of the final permit, the Mayor may do either:
 - (A) Extend or reopen the public comment period (for an additional time not to exceed thirty (30) days) to solicit comment on additional permit provisions to implement the new requirements; or
 - (B) If the Mayor determines that extension or reopening of the public comment period would unduly delay issuance of the permit, include within the proposed or final permit a provision stating that the permit will be reopened to incorporate the new requirements and expressly excluding the new requirements from the protection of the permit shield. If the Mayor elects to issue the proposed or final permit without incorporating the new requirements, the Mayor shall, within thirty (30) days of the new requirements

becoming applicable to the source, institute proceedings pursuant to § 303.6 to reopen the permit to incorporate the new requirements. The reopening proceedings may be instituted, but need not be completed, before issuance of the final permit;

- (e) The following action shall be taken after the Mayor's transmittal of the proposed permit, permit modification or permit renewal for the Administrator's review:
 - (1) Upon receipt of notice from the Administrator that the Administrator will not object to a proposed permit, permit modification, or permit renewal that has been transmitted for the Administrator's review pursuant to this section, the Mayor shall issue the permit, permit modification, or permit renewal no later than the fifth (5th) day following receipt of the notice from the Administrator;
 - (2) Upon the passage of forty-five (45) days after transmission of a proposed permit, permit modification, or permit renewal for the Administrator's review, and if the Administrator has not notified the Mayor that the Administrator objects to the proposed permit action, the Mayor shall issue the permit, permit modification, or renewal no later than the fiftieth (50th) day following transmission for the Administrator's review; or
- (f) Except as provided in § 303.1(f)(1) or (2) of this paragraph, the Mayor shall take final action on each application for a permit within eighteen (18) months after receiving a complete application. For each application, the Mayor shall transmit a proposed permit, modification, or renewal to the Administrator no later than fifty (50) days before the appropriate deadline for permit issuance established in this section:
 - (1) The Mayor shall take final action on at least one-third (1/3) of all initial permit applications (as defined in § 301.1(a)(1)) annually during the first three (3) years following the effective date of the operating permit program; and
 - (2) The Mayor shall take action on any permit, permit modification, or renewal issued in compliance with regulations promulgated under Title IV or V of the Act for the permitting of affected sources under the Acid Rain Program within the time specified in those regulations; and
- (g) To the extent feasible, applications shall be acted upon in the order received, except that priority shall be given to taking final action on applications for construction or modification under Title I, Parts C and D of the Act.

303.2 Except as provided in § 303.2(a), no source subject to this chapter may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under this chapter:

- (a) If a source subject to the requirement to obtain a permit under this chapter submits a timely and complete application for permit issuance or renewal, that source's failure to have a permit shall not be a violation of the requirement to have such a permit until the Mayor takes final action on the application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to § 303.1(b), the applicant fails to submit by the deadline specified in writing by the Mayor any additional information needed to process the application; and
- (b) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Act.

303.3 Procedures affecting permit renewal and expiration shall be subject to the following requirements:

- (a) Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected State comment, and the Administrator's review, that apply to initial permit issuance under § 303.1, except that an application for permit renewal may address only those portions of the permit that require revision, supplementing, or deletion, incorporating the remaining permit terms by reference from the previous permit. The Mayor may similarly, in issuing a draft renewal permit or proposed renewal permit, specify only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference;
- (b) A source's right to operate shall terminate upon the expiration of its permit unless a timely and complete renewal application has been submitted at least six (6) months before the date of expiration or the Mayor has taken final action approving the source's application for renewal by the expiration date; and
- (c) If a timely and complete application for a permit renewal is submitted, but the Mayor fails to take final action to issue or deny the renewal permit before the end of the term of the previous permit, then the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

303.4 The characterization of administrative permit amendments shall be outlined as follows:

- (a) An "administrative permit amendment" is a permit revision that:

- (1) Corrects typographical errors;
 - (2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (3) Requires more frequent monitoring or reporting by the permittee;
 - (4) Allows for a change in ownership or operational control of a source where the Mayor determines no other change in the permit is necessary; provided, that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Mayor; or
 - (5) Incorporates any other type of change which the Administrator has determined as part of the Mayor's approved permit rule to be similar to those in paragraphs (d)(1)(i) through (iv) of § 70.7 of Part 70;
- (b) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act;
- (c) An administrative permit amendment shall be made by the Mayor in accord with the following:
- (1) The Mayor shall take final action on a request for an administrative permit amendment within sixty (60) days from the date of receipt of a request, and may incorporate the proposed changes without providing notice to the public or affected States; provided, that the Mayor designates any permit revisions as having been made pursuant to this paragraph;
 - (2) The Mayor shall transmit a copy of the revised permit to the Administrator;
 - (3) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request; and
- (d) The Mayor may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in §302.6 for administrative permit amendments made pursuant to §303.4(a)(5).

303.5

A permit modification shall be any revision to an operating permit that cannot be

accomplished under the program's provisions for administrative permit amendments under §303.4. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act as follows:

- (a) The Mayor shall provide adequate, streamlined, and reasonable procedures for expeditiously processing permit modifications by adopting and complying with the procedures established in the paragraphs of this subsection:
- (b) Minor permit modification procedures shall be follows:
 - (1) Criteria:
 - (A) Minor permit modification procedures may be used only for those permit modifications that:
 - (i) Do not violate any applicable requirement;
 - (ii) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;
 - (iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis; and
 - (iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include the following:
 - (a) A federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act; and
 - (b) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and
 - (v) Are not modifications under any provision of Title I

of the Act;

- (B) Notwithstanding §§ 303.5(b)(1)(A) and (c)(1) of this subsection, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable requirement;
- (2) To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the basic permit application requirements under this chapter and shall include the following:
- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - (B) The source's suggested draft permit;
 - (C) Certification by a responsible official, consistent with § 301.4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
 - (D) Completed forms for the Mayor to use to notify the Administrator and affected States as required under § 304;
- (3) Within five (5) working days of receipt of a complete minor permit modification application, the Mayor shall meet the Mayor's obligation under §§ 70.8(a)(1) and (b)(1) of 40 CFR Part 70 to notify the Administrator and affected States of the requested permit modification. The Mayor shall promptly send any notice required under § 304.2(b) to the Administrator;
- (4) The Mayor will not issue a final permit modification until after the Administrator's forty-five (45) day review period or until the Administrator has notified the Mayor that the Administrator will not object to issuance of the permit modification, whichever occurs first, although the Mayor can approve the permit modification prior to that time. Within ninety (90) days of the Mayor's receipt of an application under the minor permit modification procedures or fifteen (15) days after the end of the Administrator's forty-five (45) day review period under § 304.3, whichever is later, the Mayor shall do one of the following:

- (A) Issue the permit modification as proposed;
 - (B) Deny the permit modification application;
 - (C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
 - (D) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by § 304.1;
- (5) Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change allowed by the preceding sentence, and until the Mayor takes any of the actions specified in subparagraphs (b)(4)(A) through (C) of this subsection, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it;
- (6) The permit shield under § 302.6 will not extend to minor permit modifications;
- (c) Pursuant to this paragraph, the Mayor may modify the procedure outlined in §303.5(b) to process groups of a source's applications for certain modifications eligible for minor permit modification processing:
- (1) Group processing of modifications may be used only for those permit modifications:
 - (A) That meet the criteria for minor permit modification procedures under § 303.5(b)(1)(A); and
 - (B) That collectively are below the following threshold level: ten percent (10%) of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent (20%) of the applicable definition of major source in § 399.1, or five (5) tons per year, whichever is least;
 - (2) An application requesting the use of group processing procedures shall meet the requirements of § 301.3, and shall include the

following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - (B) The source's suggested draft permit;
 - (C) Certification by a responsible official, consistent with § 301.4, that the proposed modification meets the criteria for use of group processing procedures and a request that the procedures be used;
 - (D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under § 303.5(c)(1)(B);
 - (E) Certification, consistent with § 301.4, that the source has notified the Administrator of the proposed modification (The notification need only contain a brief description of the requested modification); and
 - (F) Completed forms for the Mayor to use to notify the Administrator and affected States as required under § 304.
- (3) On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under § 303.5(c)(1)(B), whichever is earlier, the Mayor shall, in accordance with §§ 304.1(a) and 304.2(a), notify the Administrator and affected States of the requested permit modifications. The Mayor shall send any notice required under § 304.2(b) to the Administrator;
- (4) The provisions of § 303.5(b)(4) shall apply to modifications eligible for group processing, except that the Mayor shall take one of the actions specified in §§ 303.5(b)(4)(A) through (D) within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of the Administrator's forty-five (45) day review period under § 304.3, whichever is later;
- (5) The provisions of § 303.5(b)(5) shall apply to modifications eligible for group processing; and
- (6) The provisions of § 303.5(b)(6) shall also apply to modifications eligible for group processing;

- (d) Significant modification procedures shall be as follows:
- (1) Significant modification procedures shall be used for applications requesting permit modifications that:
 - (A) Involve a significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or record keeping permit terms or conditions;
 - (B) Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - (C) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include the following:
 - (i) A federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
 - (ii) An alternative emissions limit approved pursuant to regulations promulgated under §112(i)(5) of the Act;
 - (D) Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments under §303.4(e); and
 - (E) Do not qualify as administrative permit amendments under §303.4(a) or minor permit modifications under § 303.5(b);
 - (2) Nothing herein shall be construed to preclude the permittee from making changes consistent with Part 70 that would render existing permit compliance terms and conditions irrelevant; and
 - (3) Significant permit modifications shall meet all requirements of this chapter that are applicable to permit issuance and renewal, including those for applications, public participation, review by affected States, and review by the Administrator. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements that will apply if

the change occurs. The Mayor shall complete review of significant permit modifications within nine (9) months after receipt of a complete application.

303.6 Each issued permit shall be subject to be reopened for cause under the following circumstances:

- (a) A permit shall be reopened for cause if the following occurs:
 - (1) The Mayor or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms of the permit;
 - (2) Additional applicable requirements under the Act become applicable to the source; provided, that reopening on this ground is not required if the following occurs:
 - (A) The source is not a major source;
 - (B) The permit has a remaining term of less than three (3) years;
 - (C) The effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to §303.3(c); or
 - (D) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit;
 - (3) Additional requirements (including excess emissions requirements) become applicable to a source under the Acid Rain Program; provided, that upon approval by the Administrator excess emissions offset plans shall be deemed to be incorporated into the permit; or
 - (4) The Mayor or the Administrator determines that the permit must be revised to assure compliance by the source with applicable requirements;
- (b) If the Mayor finds reason to believe that a permit should be reopened and modified for cause, the Mayor shall provide at least thirty (30) days prior written notice to that effect to the source, except the notice period can be shorter if the Mayor finds that an emergency exists. The notice shall include the following:
 - (1) A statement of the terms and conditions that the Mayor proposes to change, delete, or add to the permit. If the Mayor does not have

sufficient information to determine the terms and conditions that must be changed, deleted, or added to the permit, the notice shall request the source to provide that information within a period of time specified in the notice, which shall be not less than thirty (30) days except in the case of an emergency; and

- (2) If the proposed reopening is to be done pursuant to §303.6(a) the Mayor shall give the source an opportunity to provide evidence that the permit should not be reopened;
- (c) When modifying a permit, the Mayor shall follow the procedures established under §§ 303.1 and 303.10 and shall alter only those portions of the permit for which cause to reopen exists. The source shall in all cases be afforded an opportunity to comment on the revised permit terms;
- (d) While a reopening proceeding is pending, the source shall be entitled to the continued protection of any permit shield provided in the permit pending issuance of a modified permit unless the Mayor specifically suspends the shield on the basis of a finding that the suspension is necessary to implement applicable requirements. If such a finding applies only to certain applicable requirements or to certain permit terms, the suspension shall extend only to those requirements or terms; and
- (e) Any reopening under §303.6(a)(2) shall be completed within eighteen (18) months after promulgation of the applicable requirements.

303.7

Each issued permit may be reopened (modifications) and revoked for cause by the Administrator under the following circumstances:

- (a) If the Mayor receives a notice from the Administrator that the Administrator has found that cause exists to revoke, or reopen a permit, the Mayor shall, within ten (10) days after receipt of the notification, provide notice to the source. The notice to the source shall include a copy of the notice from the Administrator and invite the source to comment in writing on the proposed action;
- (b) Within ninety (90) days following receipt of the notification from the Administrator, the Mayor shall issue and forward to the Administrator a proposed determination in response to the Administrator's notification. The Mayor may request additional time for this transmission pursuant to Part 70 if such time is required to obtain a new or revised permit application or other information from the source; and
- (c) Within ninety (90) days of receipt of an objection from the Administrator on his or her proposed determination, the Mayor shall either resolve the objection or modify or revoke the permit in accordance with the Administrator's objection.

303.8 The following procedures shall apply to revocations and terminations:

- (a) The Mayor may terminate a permit at the request of the permittee or revoke it for cause. For purposes of this section, cause for revocation exists if the following occurs:
 - (1) The permitted stationary source is in violation of any term or condition of the permit and the permittee has not undertaken appropriate action (such as a schedule of compliance) to resolve the violation;
 - (2) The permittee has failed to disclose material facts relevant to issuance of the permit or has knowingly submitted false or misleading information to the Mayor;
 - (3) The Mayor finds that the permitted stationary source or activity substantially endangers public health, safety, or the environment, and that the danger cannot be removed by a modification of the terms of the permit;
 - (4) The permittee has failed to pay permit fees required under §305; or
 - (5) The permittee has failed to pay a civil or criminal penalty imposed for violations of the permit;
- (b) Upon finding that cause exists for revocation of a permit, the Mayor shall notify the permittee of that finding in writing, stating the reasons for the proposed revocation. Within thirty (30) days following receipt of that notice, the permittee may submit written comments concerning the proposed revocation and may request a hearing pursuant to §104. If the Mayor thereafter makes a final determination to revoke the permit, the Mayor shall provide a written notice to the permittee specifying the reasons for the decision and the effective date of the revocation;
- (c) A revocation issued under this section may be issued conditionally with a future effective date and may specify that the revocation will not take effect if the permittee satisfies the specified conditions before the effective date;
- (d) A permittee may at any time apply for termination of all or a portion of its permit relating solely to operations, activities, and emissions that have been permanently discontinued at the permitted stationary source. An application for termination shall identify with specificity the permit or permit terms that relate to the discontinued operations, activities, and emissions. The Mayor shall act on an application for termination on this ground within ninety (90) days of receipt and shall grant the application for termination upon finding that the permit terms for which termination is sought relate solely to

operations, activities, and emissions that have been permanently discontinued. In terminating all or portions of a permit pursuant to this subsection, the Mayor may make appropriate orders for the submission of a final report or other information from the source to verify the complete discontinuation of the relevant operations, activities, and emissions;

- (e) A source may apply for termination of its permit on the ground that its operations, activities, and emissions are fully covered by a general permit for which it has applied for and received coverage pursuant to §302.4. The Mayor shall act on an application for termination on this ground within ninety (90) days of receipt and shall grant the application upon a finding that the source's operations, activities, and emissions are fully covered by a general permit; and
- (f) A source that has received a final revocation or termination of its permit may apply for a new permit under the procedures established in §301.

303.9 If applicable requirements require the Mayor to make a case-by-case determination of an emission standard, technology requirement, work practice standard, or other requirement for a source and to include terms and conditions implementing that determination in the source's permit, the source shall include in its permit application under §301 a proposed determination, together with the data and other information upon which the determination is to be based and proposed terms and conditions to implement the determination. Upon receipt of a request from the source, the Mayor may meet with the source before the permit application is submitted to discuss the determination and the information required to make it. In the event that the Mayor determines that the source's proposed determination and implementing terms and conditions should be revised in the draft permit, the proposed permit, or the final permit, the Mayor shall inform the source of the changes to be made and allow the source to comment on those changes before issuing the draft permit, proposed permit, or final permit.

303.10 Except for modifications qualifying for the minor permit modification procedures under §303.5(b), all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be conducted in accordance with the following procedures for public participation:

- (a) After receiving a complete application for a permit, significant permit modification, or permit renewal, the Mayor shall, no later than sixty-one (61) days before the deadline for issuing a proposed permit, significant modification, or renewal for the Administrator's review, issue a draft permit and solicit comment from the applicant, from the affected States and from the public as follows:
 - (1) The Mayor shall provide notice to the public by doing the following:

- (A) Making available a public file containing a copy of all materials (including permit applications, compliance plans, permit monitoring and compliance certification reports, except for information entitled to confidential treatment under §301.1(c)) that the applicant has submitted, a copy of the preliminary determination and draft permit or permit renewal, and a copy or summary of other materials, if any, considered in making the preliminary determination;
 - (B) Publishing in the *District of Columbia Register* and using any other means necessary to assure adequate notice to the affected public of the application, the preliminary determination, the location of the public file, the procedures for submitting written comments, the procedures for requesting a hearing if the Mayor has not scheduled a hearing, and the date, time and location of the public hearing; and
 - (C) Publishing any notice of a public hearing at least thirty (30) days in advance of the hearing.
- (2) Copies of the notice required under §303.10(a)(1)(B) shall be sent to the applicant, to the representatives of affected States designated by those states to receive the notices, and to persons on a mailing list developed by the Mayor, including those who request in writing to be on the list;
- (b) The public notice shall establish a period of not less than thirty (30) days following publication of the notice for the submission of written comments and shall identify the affected stationary source the name and address of the applicant or permittee, the name and address of the Mayor's representative with responsibility for the permitting action, the activity or activities involved in the permit action, the emissions change involved in any permit modification, and the location of the public file;
 - (c) The applicant shall be afforded an opportunity to submit, within ten (10) days following the close of the public comment period or the public hearing, whichever is later, a response to any comments made;
 - (d) The Mayor shall consider all comments submitted by the applicant, the public, and affected States in reaching its final determination and issuing the proposed permit, modification, or renewal for the Administrator's review. The Mayor shall maintain a list of all commenters and a summary of the issues raised in sufficient detail such that the Administrators may fulfill his or her obligation under §505(b)(2) of the Act and shall make that information available in the public file and supply it to the Administrator upon request; and

- (e) At the time the Mayor issues a proposed permit, modification, or renewal for the Administrator's review, the Mayor shall issue a written response to all comments submitted by affected States and all significant comments submitted by the applicant and the public. Copies of this written response shall be provided to the Administrator, affected States, and the applicant, and a copy shall be placed in the public file.

303.11 Any final action in granting or denying an application for a permit, permit amendment or modification, or permit renewal shall be subject to judicial review in the Superior Court of the District of Columbia upon an application filed by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review under District law. The opportunity for judicial review provided for in this subsection shall be the exclusive means for obtaining judicial review of any permit action. Procedures for judicial review shall be as follows:

- (a) No application for judicial review may be filed more than ninety (90) days following the final action on which the review is sought, unless:
 - (1) The grounds for review arose at a later time, in which case the application for review shall be filed within ninety (90) days of the date on which the grounds for review first arose and review shall be limited to the later-arising grounds; or
 - (2) The final action being challenged is the Mayor's failure to take final action, in which case an application for judicial review may be filed any time before the Mayor denies the permit or issues the final permit.
- (b) Any application for judicial review shall be limited to the following:
 - (1) Issues raised in written comments filed with the Mayor or during a public hearing on the proposed permit action (if the grounds on which review is sought were known at that time), except that this restriction shall not apply if the person seeking review was not afforded an advance opportunity to comment on the challenged action; and
 - (2) Issues that are germane and material to the permit action at issue.

SOURCE: Final Rulemaking published at 40 DCR 8105, 8128 (November 19, 1993); as amended by Final Rulemaking published at 48 DCR 4479, 4481-83 (May 18, 2001); and by Final Rulemaking published at 50 DCR 2343 (March 21, 2003).

304 PERMIT REVIEW BY THE ADMINISTRATOR AND AFFECTED STATES

304.1 The transmission of information to the Administrator shall be accomplished as

follows:

- (a) Unless the Administrator waives this requirement, the Mayor shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final Part 70 permit. The Mayor may require the applicant to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the Mayor may transmit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information will be provided in computer-readable format compatible with the Administrator's national database management system; and
- (b) The Mayor shall keep for five (5) years the records and transmit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of Part 70.

304.2 Review of permit information by the Affected States shall be allowed in the following manner:

- (a) The Mayor shall give notice of each draft permit to any Affected State on or before the time that the Mayor provides this notice to the public under §303.10, except to the extent §§ 303.5(b) or 303.5(c) requires the timing of the notice to be different; and
- (b) As part of the Mayor's transmittal of a proposed permit to the Administrator (or as soon as possible after the transmittal for minor permit modification procedures under §303.5(b) or (c)), the Mayor shall notify the Administrator and any Affected State in writing of any refusal by the Mayor to accept all recommendations for the proposed permit that the Affected State submitted during the public or Affected State review period. The notice will include the Mayor's reasons for not accepting any such recommendation. The Mayor is not required to accept recommendations that are not based on applicable requirements or the requirements of this chapter.

304.3 The Administrator shall object to the issuance of any proposed permit determined by the Administrator not to be in compliance with the requirements of the Part 70 regulations:

- (a) No permit for which an application must be transmitted to the Administrator under § 304.1 shall be issued, if the Administrator objects to its issuance in writing within forty-five (45) days of receipt of the proposed permit and all necessary supporting information. Except as provided in § 304.3(c), the grounds for any such objection shall only be that the permit will not comply

with applicable requirements or 40 CFR Part 70 regulations;

- (b) Any Administrator's objection under §304.3(a) shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection;
- (c) Failure of the Mayor to do any of the following also shall constitute grounds for an objection:
 - (1) Comply with §§ 304.1 or 304.2;
 - (2) Transmit any information necessary to review adequately the proposed permit; or
 - (3) Process the permit under the procedures approved to meet §303.10 except for minor permit modifications; and
- (d) If the Mayor fails, within ninety (90) days after the date of an objection under §304.3(a), to revise and transmit a proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of Part 70.

304.4

If the Administrator does not object in writing under § 304.3, any person that meets the requirements of this subsection may petition the Administrator within sixty (60) days after the expiration of the Administrator's forty-five (45) day review period to make the objection. Any petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in § 303.10, unless the petitioner demonstrates that it was impracticable to raise the objections within that period, or unless the grounds for the objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Mayor shall not issue the permit until the Administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to the Administrator's objection. If the Mayor has issued a permit prior to receipt of the Administrator's objection under this paragraph, the Administrator shall modify, terminate, or revoke the permit, and shall do so consistent with the procedures in § 303.7 except in unusual circumstances, and the Mayor may thereafter issue only a revised permit that satisfies the Administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

SOURCE: Final Rulemaking published at 40 DCR 8105, 8144 (November 19, 1993).

305**PERMIT FEES**

305.1

Owners or operators of Part 70 sources shall pay annual fees of twenty-five

dollars (\$25) per year (as adjusted pursuant to the criteria set forth in §305.2) times the total tons of actual emissions of each regulated pollutant (for presumptive fee calculation purposes) emitted from Part 70 sources.

- 305.2 The fee described in §305.1 shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of the year exceeds the Consumer Price Index for the calendar year 1989:
- (a) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31st of each calendar year; and
 - (b) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used. The Consumer Price Index for all-urban consumers for the month of August 1989 is one hundred twenty-four and six tenths (124.6).

305.3 Owners or operators of Part 70 sources that fail to pay a fee assessed by the Mayor shall pay a penalty of fifty percent (50%) of the fee amount, plus interest pursuant to §502(b)(c)(ii) of the Act.

305.4 All fees, penalties, and interest collected pursuant to this chapter shall be deposited by the Mayor in a special D.C. Treasury fund, subject to appropriation, to carryout Part 70 program activities solely.

SOURCE: Final Rulemaking published at 40 DCR 8105, 8147 (November 19, 1993); as amended by Final Rulemaking published at 48 DCR 4479, 4483 (May 18, 2001).

306 ACID RAIN PROGRAM

306.1 The requirements of 40 CFR Parts 72 and 75, as in effect on September 30, 1997, are hereby adopted by reference for purposes of implementing an acid rain program that meets the requirements of title IV of the Clean Air Act, with the terms used and defined, except that the term “permitting authority” shall mean “Director.”

306.2 If the provisions or requirements of 40 CFR Part 72 or 75 conflict with or are not included in regulations in this chapter, the Part 72 and 75 provisions and requirements shall apply and take precedence.

SOURCE: Final Rulemaking published at 45 DCR 7037, 7040 (October 2, 1998).

307 ENFORCEMENT FOR SEVERE OZONE NONATTAINMENT AREAS

307.1 Pursuant to Section 182 (d) of the federal Clean Air Act, 42 U.S.C. 7511a, if the United States Environmental Protection Agency (“EPA”) determines that the District of Columbia has failed to attain the national primary ambient air quality

standard for ozone (O₃) by the applicable attainment date for severe ozone nonattainment areas, the owners or operators of each major stationary source of oxides of nitrogen (NO_x) or volatile organic compounds (VOCs) located in the District of Columbia shall, except as otherwise provided under § 307.2, pay a fee to the District of Columbia, for NO_x emissions if the stationary source qualifies as major with respect to NO_x emissions, or for VOC emissions if the stationary source qualifies as major with respect to VOC emissions, computed in accordance with paragraphs (a), (b), and (c) of this subsection, for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone;

- (a) The fee shall equal five thousand dollars (\$5,000), adjusted in accordance with paragraph (c), per ton of NO_x or VOC emitted by the source during the calendar year in excess of eighty percent (80%) of the baseline amount, computed under paragraph (b);
- (b) For purposes of this section, the baseline amount shall be computed as the lower of the amount of actual NO_x or VOC emissions or NO_x or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of NO_x or VOC emissions allowed under the State Implementation Plan) during the attainment year. Notwithstanding the preceding sentence, the baseline amount may be determined over a period of more than one calendar year in accordance with guidance issued by the EPA; and
- (c) The fee amount under paragraph (a) shall be adjusted annually, beginning in calendar year 1991, in accordance with the federal Clean Air Act section 502(b)(3)(B)(v), 42 U.S.C. 7661a(b)(3)(B)(v), relating to inflation adjustment.

307.2 Notwithstanding any provision of this section, no source shall be required to pay any fee under § 307.1 with respect to emissions during any year that is treated as an extension year under the federal Clean Air Act section 181(a)(5), 42 U.S.C. 7511(a)(5).

307.3 Any fees, penalties, and interest collected under this section shall be deposited in a special fund in the District of Columbia Treasury and shall be utilized solely to cover all reasonable direct and indirect costs required to support the air quality program as set forth in Chapter 3.

SOURCE: Final Rulemaking published at 51 DCR 3878 (April 16, 2004).

399 DEFINITIONS AND ABBREVIATIONS

399.1 When used in this chapter, the following definitions shall apply to this chapter. Except as specifically provided in this section, terms used in this chapter retain the meaning ascribed under the applicable requirements of the Act.

Acid Rain Program – the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the Act, 40 CFR Parts 72, 73, 75, 77, and 78, and regulations implementing §§ 407 and 410 of the Act.

Act – the Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

Actual emissions – the actual rate of emissions in tons per year for any regulated pollutant (for presumptive fee calculation purposes) emitted from a Part 70 source over the preceding calendar year or any other period determined by the Mayor to be representative of normal source operation and consistent with the fee schedule approved pursuant to § 305. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and in-place control equipment, as well as types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the Mayor.

Administrator – the Administrator of the United States Environmental Protection Agency or the Administrator’s duly authorized representative.

Affected source – a source that includes one or more affected units.

Affected States – are all States that meet one of the following requirements:

- (a) One of the following contiguous states: Maryland and Virginia;
- (b) In the judgment of the Mayor, may be directly affected by emissions from the stationary source seeking the permit, permit modification, or permit renewal being proposed; or
- (c) Located within fifty (50) miles of the permitted source.

Affected unit – a fossil fuel-fired combustion device that is subject to emission reduction requirements or limitations under Title IV of the Act.

Allowance – an authorization by the Administrator under the Acid Rain Program to emit up to one (1) ton of sulfur dioxide during or after a specified calendar year.

Applicable requirement – all of the following as they apply to emissions units in a Part 70 source subject to these regulations (including requirements that have been promulgated or approved by the Administrator through rulemaking at the time of issuance but have future-effective compliance dates, provided that those requirements will, upon the effective compliance date, be applicable to the operations addressed in the permit):

- (a) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by the Administrator through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (b) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the

Act;

- (c) Any standard or other requirement under § 111 of the Act, including § 111(d);
- (d) Any standard or other requirement under § 112 of the Act, including any requirement concerning accident prevention under § 112(r)(7) of the Act, but not including the contents of any risk management plan required under § 112(r) of the Act;
- (e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;
- (f) Any requirements established pursuant to §§ 504(b) or 114(a)(3) of the Act;
- (g) Any standard or other requirement governing solid waste incineration, under § 129 of the Act;
- (h) Any standard or other requirement for consumer and commercial products, under § 183(e) of the Act;
- (i) Any standard or other requirement for tank vessels, under § 183(f) of the Act;
- (j) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under § 328 of the Act;
- (k) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (l) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to § 504(e) of the Act.

Area source – any stationary source of air pollutants that is not a major source.

Consumer Price Index – the U.S. Department of Labor, Bureau of Labor Statistics unadjusted Consumer Price Index for All Urban Consumers for the U.S. city average, for All Items on the latest reference base, or if such index is no longer published, such other index as the Mayor and the Administrator in their discretion determine meets the requirements of these regulations and the Act.

Designated representative – a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program.

Draft permit – the version of a permit for which the Mayor offers public participation under § 303.10 or affected State review under § 304.

Effective date – the date on which the operating permit program is approved by the Administrator.

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

Emissions allowable under the permit – a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit – any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under §112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the Act.

Final permit – the version of a Part 70 permit issued by the Mayor that has completed all review procedures required by §§ 303 and 304.

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

General permit – a Part 70 permit that meets the requirements of §302.4 of this chapter.

Major source – any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) A major source under §112 of the Act, which is defined as follows:

- (1) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of any hazardous air pollutant which has been listed pursuant to § 112(b) of the Act, twenty-five (25) tons per year or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

- (2) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.
- (b) A major stationary source of air pollutants, as defined in § 302 of the Act, that directly emits or has the potential to emit, one hundred (100) tons per year or more of any air pollutant (including any major source of fugitive emissions of any pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of § 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:
- (1) Coal cleaning plants (with thermal dryers);
 - (2) Kraft pulp mills;
 - (3) Portland cement plants;
 - (4) Primary zinc smelters;
 - (5) Iron and steel mills;
 - (6) Primary aluminum ore reduction plants;
 - (7) Primary copper smelters;
 - (8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;
 - (9) Hydrofluoric, sulfuric, or nitric acid plants;
 - (10) Petroleum refineries;
 - (11) Lime plants;
 - (12) Phosphate rock processing plants;
 - (13) Coke oven batteries;
 - (14) Sulfur recovery plants;
 - (15) Carbon black plants (furnace process);

- (16) Primary lead smelters;
 - (17) Fuel conversion plants;
 - (18) Sintering plants;
 - (19) Secondary metal production plants;
 - (20) Chemical process plants;
 - (21) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million (250,000,000) British Thermal Units per hour heat input;
 - (22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;
 - (23) Taconite ore processing plants;
 - (24) Glass fiber processing plants;
 - (25) Charcoal production plants;
 - (26) Fossil-fuel-fired steam electric plants of more than two hundred fifty million (250,000,000) British Thermal Units per hour heat input; or
 - (27) All other stationary source categories regulated by a standard promulgated under §§ 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;
- (c) A major stationary source as defined in Part D of Title I of the Act, including the following:
- (1) For ozone nonattainment areas, sources with the potential to emit one hundred (100) tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” fifty (50) tons per year or more in areas classified as “serious,” twenty-five (25) tons per year or more in areas classified as “severe,” and ten (10) tons per year or more in areas classified as “extreme”; except that the references in this paragraph to one hundred (100), fifty (50), twenty-five (25), and ten (10) tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under §182(f)(1) or (2) of the Act, that requirements under §82(f) of the Act do not apply;
 - (2) For ozone transport regions established pursuant to §184 of the Act, sources with the potential to emit fifty (50) tons per year or more of volatile organic compounds;
 - (3) For carbon monoxide nonattainment areas:

- (A) That are classified as “serious,” and
 - (B) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit fifty (50) tons per year or more of carbon monoxide; and
- (4) For particulate matter (PM₁₀) nonattainment areas classified as “serious,” sources with the potential to emit seventy (70) tons per year or more of PM₁₀.
- (d) For purposes of this chapter, a research and development stationary source may be treated as a separate source from other stationary sources that are located on a contiguous or adjacent property and under common control if it has a separate two-digit SIC code.

Mayor – the Mayor of the District of Columbia or the Mayor’s designated agent.

Part 70 permit or permit (unless the context suggests otherwise) – any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this chapter.

Part 70 program or state program – a program approved by the Administrator under 40 CFR Part 70.

Part 70 or Part 70 regulations – the Administrator’s regulations published at 40 CFR Part 70.

Part 70 source – any source subject to the permitting requirements of this chapter, as provided in §§ 300.1 and 300.2.

Permit modification – a revision to a Part 70 permit that meets the requirements of §303.5 of this chapter.

Permit program costs – all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in §305 (whether such costs are incurred by the Mayor or other District agencies that do not issue permits directly, but that support permit issuance or administration).

Permit revision – any permit modification or administrative permit amendment.

Potential to emit – the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations promulgated thereunder.

Proposed permit – the version of a permit that the Mayor proposes to issue and forwards to the

Administrator for review in compliance with §304 of this chapter.

Regulated air pollutant – the following applies:

- (a) Nitrogen oxides or any volatile organic compounds;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;
- (c) Any pollutant that is subject to any standard promulgated under §111 of the Act;
- (d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
- (e) Any pollutant subject to a standard promulgated under § 112 or other requirements established under §§ 112(g), (j), and (r) of the Act. Where such a standard or other requirement applies only to one or more sources or categories of sources of an air pollutant, that pollutant is a “regulated air pollutant” for all sources or categories. If the Administrator fails to promulgate a standard by the date established pursuant to § 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date eighteen (18) months after the applicable date established pursuant to § 112(e) of the Act.

Regulated pollutant (for presumptive fee calculation), which is used only for purposes of §305 – any “regulated air pollutant” except the following:

- (a) Any pollutant that is a regulated air pollutant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the act;
- (b) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under §112(r) of the Act; or
- (c) Carbon monoxide.

Renewal – the process by which a permit is reissued at the end of its term.

Responsible official – for the following:

- (a) A corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and to one of the following:
 - (1) The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty five million dollars (\$25,000,000) (in second quarter 1980 dollars); or

- (2) The delegation of authority to such representatives is approved in advance by the permitting authority;
- (b) The partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (c) A municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For purposes of these regulations, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional administrator); or
- (d) Affected sources:
 - (1) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
 - (2) The designated representative for any other purposes under this chapter.

Section 502(b)(10) changes – changes allowed in a permitted stationary source without requiring a permit revision pursuant to §302.8 – also changes that contravene an express permit term. The changes do not include changes that would violate applicable requirements or contravene federally-enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

Stationary source – any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under §112(b) of the Act.

Title I modification or modification under any provision of Title I of the Act – any modification under §§ 111 or 112 of the Act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the Act.

SOURCE: Final Rulemaking published at 40 DCR 8105, 8147 (November 19, 1993).