STATE OF COLORADO

COLORADO DEPARTMENT OF HEALTH
222 So. 6th St, Room 232
Grand Junction, Colorado 81501

Roy Romer
Governor

Thomas M. Vernon, M.D.
Executive Director

CERTIFIED MAIL NO. P167106889
CERTIFIED MAIL NO. P167106890

July 15, 1987

RECEIVED JUL 16 1987

Mesa County Board of Commissioners
Chairman
P.O. Box 897
Grand Junction, CO. 81502

City of Grand Junction
Mayor Ragsdale
200 N. 5th
Grand Junction, CO. 81501

Re: Official Notice of Violation

Dear Sirs:

Complaints have been received by the Air Pollution Control Division concerning odors from the Persigo Wash Wastewater Treatment Facility owned by Mesa County and operated by the City of Grand Junction. A review of Division files indicates that a permit has never been issued for this operation. Further, time allowed the City of Grand Junction to evaluate the potential odor sources and develop control stratagies has not resulted in any acceptable ambient air pollution control stratagies upon which an Air Pollution permit can be based.

Pursuant to the above information, and as provided by Section 25-7-115(2), CRS, this letter will serve as a NOTICE OF VIOLATION of Regulation No. 3, Section II.A and Section III.A., and Section 25-7-114(4), CRS, (copies attached).

In accordance with the requirements of the Colorado Air Quality Control Act, CRS, Section 25-7-115(3), a conference regarding the alleged violation has been scheduled for Thursday, July 30, 1987, at the Mesa County Health Department, 515 Patterson Road, Grand Junction, Colorado, at 10:30 a.m. As a result of the conference a determination will be made as to whether a violation occurred and, if such violation did occur, whether a noncompliance penalty must be assessed under Section 25-7-115(5), CRS. This conference will provide Mesa County/City of Grand Junction an opportunity to submit data, views and arguments concerning the alleged violations and whether assessment of a noncompliance penalty is required. The Department may provide further opportunity for Mesa County/City of Grand Junction to respond after the conference if circumstances warrant. Should the scheduled date or time impose an inconvenience for you, contact this office for rescheduling.

However, should you not attend the scheduled conference nor request a re-scheduling of the meeting, further enforcement action shall be taken in accordance with Sections 25-7-121 (court injunction), CRS.

Please be advised that in accordance with Section 25-7-122(1)(b), CRS, a civil penalty of not more than $25,000. per day may be assessed for each day of violation from the date of this notice until the date on which the wastewater treatment facility is brought into compliance.

The Department intends to explain all procedures and possible sanctions at the above referenced conference. We will outline your statutory rights, including rights to administrative appeals and possible applicable exemptions, at the conference as well.

If you have any questions concerning the conference or which need answering prior to the scheduled conference, please contact this office (303-248-7150) or Dick Fox, in the Denver office (303-331-8581). The conference is an informal proceeding. You may, however, have legal council attend.

Sincerely,

Scott J. Miller

Scott J. Miller
Air Pollution Control Engineer
Air Pollution Control Division

SJM/zp

cc: Marius Gedgaudas, US EPA
Linda White, Attorney Generals Office
Mesa County Health Department
Greg Trainor, City of Grand Junction
Jim Shanks, City of Grand Junction
Air Quality Control Commission
Dick Fox, Air Pollution Control Division
File

REGULATION NO. 3

REGULATION REQUIRING AN
AIR CONTAMINANT EMISSION NOTICE,
EMISSION PERMIT FEES

Colorado Air Quality Control Commission

REGULATION NO. 3

"A Regulation Requiring Air Contaminant Emissions Notices, Emission Permits and Fees Including Regulations for the Prevention of Significant Deterioration (PSD)".

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Amended: March 19, 1987
Effective: April 30, 1987

REGULATION NO. 3

"A Regulation Requiring Air Contaminant Emissions Notices, Emission Permits and Fees" Including Regulations for the Prevention of Significant Deterioration (PSD).

I. APPLICABILITY AND DEFINITIONS

A. The provisions of this regulation shall apply statewide. All sources which did not commence construction or operation prior to February 1, 1972, are required to have an emission permit except as specified in Section III.

B. Definitions

1. Fugitive Dust

For purposes of Regulation No. 3 and the definitions of "Major Stationary Source" and "Major Modification," "fugitive dust" means soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall not include any fraction of such soil or other airborne particulate matter which is of a size or substance to adversely affect public health or welfare.

2. Major Modification

Means any physical change in, change in the method of operation of, or addition to a major stationary source that would result in a significant net emissions increase of any air pollutant subject to regulation under the Federal Act or the Act (taking into account all emissions decreases and increases at the source which would accompany the modification).

a. Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

b. A physical change or change in the method of operation shall not include routine maintenance, repair, and replacement.

c. A physical change or change in the method of operation, unless previously limited by any enforceable permit condition which was established after January 6, 1975, for sources in attainment or unclassifiable areas and December 21, 1976, for sources in nonattainment areas, shall not include:

(i) Use of an alternative fuel or raw material by reason of an order in effect under Sections 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), a prohibition under the Power Plant and Industrial Fuel Use Act of 1978 (or any superseding legislation) or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

(ii) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Act;

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

(iv) Use of an alternative fuel or raw material which, prior to January 6, 1975 for a source in an attainment or unclassifiable area, and prior to December 21, 1976 for a source in a nonattainment area, the stationary source was capable of accommodating, or which the source is approved to use under any permit issued under 40 C.F.R. 51.18 or 52.21 or under Regulation No. 3.

(v) An increase in the production rate, if such increase does not exceed the operating design capacity of the stationary sources;

(vi) An increase in the hours of operation;

(vii) Any change in ownership of a stationary source;

(viii) Any change of an existing oil-fired or gas-fired boiler to use of a coal/oil mixture, use of shale oil, or use of coal-derived fuels which would not interfere with maintenance, or reasonable further progress towards attainment, of a National Ambient Air Quality Standard.

d. Fugitive dust, emissions caused by indirect sources of pollution, emissions from internal combustion engines on any vehicle, and emissions resulting from temporary activities, such as construction or exploration, shall be excluded in determining whether a major modification will occur. The owner or operator must demonstrate with clear and convincing evidence what portion of its emissions would be fugitive dust.

e. Except as provided in Paragraph d. above of this definition, fugitive emissions from the following stationary sources shall, to the extent quantifiable, be considered in calculating the potential to emit of the modification:

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

(ii) Portland cement plants;

(iii) Iron and steel mills;

(iv) Petroleum refineries;

(v) Lime plants;

(vi) Coke oven batteries;

(vii) Fuel conversion plants, including oil shale processing;

(viii) Sintering plants;

(ix) Fossil-fuel boilers and steam-electric power plants (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

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

3. Major Stationary Source

a. For the purpose of determining whether a source in a nonattainment area is subject to the requirements of Regulation 3, Section IV.D.2. and whether a source in an attainment area affecting a nonattainment area is subject to the requirements of Section IV.D.3.e., "Major Stationary Source" means any stationary source of air pollutants which emits, or has the potential to emit, one-hundred (100) tons per year or more of any pollutant regulated under the Federal Act.

b. For the purpose of determining whether a source in an attainment or unclassifiable area is subject to the requirements of Regulation No. 3, Section IV.D.3 (except IV.D.3.e.) and Sections XI, XIII and XIV, "Major Stationary Source" means:

(i) Any of the following stationary sources of air pollutants which emit, or have the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, Portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a total storage capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production plants;

(ii) any other stationary source which emits, or has the potential to emit 250 tons per year or more of any air pollutant regulated under the Federal Act.

c. Major stationary source includes any physical change that would occur at a stationary source not otherwise qualifying as a "major stationary source" under this definition if the change would constitute a major stationary source by itself.

d. A major source that is major for volatile organic compounds shall be considered major for ozone, except that none of the emissions of the volatile organic compounds listed in paragraph (h) of the definition of "net emissons increase" in the Common Provisions shall be included in the determination of major for ozone.

e. Fugitive dust, emissions caused by indirect air pollution sources, emissions from internal combustion engines on any vehicle, and emissions resulting from temporary activities, such as construction or exploration, shall be excluded in determining whether a source is a major stationary source. The owner or operator must demonstrate with clear and convincing evidence what portion of its emissions would be fugitive dust.

f. Except as provided in paragraph (e) of this definition, fugitive emissions from any source category listed in the definition of "Major Modifications" in Regulation 3, Section I shall be included in determining whether a source is a major stationary source.

4. Temporary

Not more than two years in duration unless the Division determines that a longer time period is appropriate.

II. Air Pollutant Emission Notice Requirements

A. General

Except as specifically exempted in subsection II.C. no person shall permit emission of air pollutants from, or construction or alteration of, any facility, process, or activity from which air pollutants are, or are to be, emitted unless and until an Air Pollution Emission Notice (APEN) has been filed with the Division with respect to such emission. Each such notice shall specify the location at which the proposed emission will occur, the name and address of the persons operating and owning such facility, the nature of such facility, process or activity, an estimate of the quantity and composition of the expected emission and other information as required in the current APEN form. The expected emissions shall be based upon actual test data or, in the absence of such data upon estimations acceptable to the Division. The Division shall make available at all air pollution control authority offices appropriate forms on which the information required by this section shall be furnished.

B. Revised APENs

1. A revised Air Pollutant Emissions Notice shall be filed:

a. Annually if a significant change in emissions has occurred at a source of air pollutants which emits, or has the potential to emit, one hundred (100) tons per year or more of any pollutant; or

b. At least once every three years if a significant change in emissions at a source other than those designated in a., above, has occurred; or

c. Whenever there is a change in the owner or operator of any facility, process, or activity; or

d. Whenever the location of a portable facility, process, or activity is changed and it is to be operated at the new location for at least thirty (30) days.

2. "Significant Change," for the purposes of this subsection B. means:

a. For any pollutant which the Division classifies as odorous, hazardous, or toxic:

(i) The emission in any amount of any such air pollutant not reported on the Air Pollutant Emission Notice (APEN) on file with the Division, or

(ii) Any change in actual emissions of any such pollutant.

b. For any other pollutants:

(i) The uncontrolled emission of 1 ton per year or more of any such air pollutant not reported on the Air Pollutant Emission Notice (APEN) on file with the Division, or

(ii) For sources emitting less than 100 tons per year, a change in actual emissions of five (5) tons per year or more of any such air pollutant; or

(iii) For VOC sources in ozone nonattainment areas emitting less than 100 tons per year, a change in actual emissions of one ton per year or more or 5 percent, whichever is greater; or

(iv) For sources emitting 100 tons per year or more, a change in actual emissions of 5 percent or 50 tons per year or more, whichever is less, of any such air pollutant.

3. a. Whether or not a significant change has occurred shall be determined for each separate emission point at a source, or at the request of the source owner or operator, on the basis of netted emission increases and decreases of emissions points which are within the same Source Classification Code subgroups and have similar process and emission characteristics.

b. Revised APENs may be in any readily understandable format which contains the emissions data or process data from which emissions data can be determined and shall contain a brief description of the reason for the significant change. A revised APEN filing fee shall be charged for each significant change reported, regardless of format.

C. Exemptions from APEN Requirements

1. The following sources are exempt from the requirement to file APENs because by themselves, or cumulatively as a category, they are deemed to have a negligible impact on air quality.

a. Air conditioning or ventilating systems not designed to remove air pollutants generated by or released from other processes or equipment.

b. Fireplaces used for recreational purposes, inside or outside.

c. Fires used for non-commercial cooking of food for human consumption.

d. Flares used to indicate danger to the public.

e. Agriculture operations normally conducted at the farm or ranch including, for example, cultivating and harvesting. This shall not include grain elevator operations, feed mill operations or other post-harvesting activities normally not conducted on the farm or ranch.

f. Construction or alteration of residential structures, including all buildings or other structures used primarily as a place for residence.

g. Experimental laboratory equipment.

h. Disturbance of surface areas which do not exceed 25 contiguous acres and which do not exceed six (6) months in duration.

i. Fuel burning equipment, other than smokehouse generators, which use gaseous fuel at an input rate of less than 750, 000 BTU per hour.

j. Sources having uncontrolled emissions of any pollutant of less than one ton per year, with the exception of sources of any emissions of hazardous, toxic, or odorous pollutants.

k. Internal combustion engines powering portable drilling rigs.

l. Petroleum industry flares, not associated with refineries, combusting natural gas containing no H_2S except in trace amounts, approved by the Colorado Oil and Gas Conservation Commission and having uncontrolled emissions of any pollutant of less than five (5) tons per year.

2. Sanding of streets and roads to abate traffic hazards caused by ice and snow.

III. GENERAL REQUIREMENT FOR EMISSION PERMITS

A. General Considerations

1. Except where specifically authorized by the terms of this Regulation No. 3, no person shall construct or modify any building, facility, structure, or installation, or install any machine, equipment, or other device, or commence the conduct of any such activity, or commence performance of any of the same which will or do constitute a new stationary source without first obtaining or having a valid permit therefor from the Division.

2. Any permit which has been issued pursuant to a prior regulation of the Commission, with respect to a project or the operation thereof, shall continue in full force and effect for the purpose for which it was originally issued.

3. Any orders or decisions of the Division shall be final upon issue.

B. Transfer or Assignment of Ownership

If tranfer or assignment of ownership or operation of a permitted air contaminant emission source is anticipated, the prospective owner or operator shall apply to the Division on Division supplied forms for reissuance of the existing permit. The permit shall be reissued upon competion of the transfer or assignment if the applicant certifies that no change is contemplated which might constitute a new or modified air pollution source. In no event shall the new owner or operator of a source which was subject to the requirements of these regulations prior to the transfer or assignment be relieved of the obligation to comply with such requirements by reason of a transfer.

C. Portable Sources

A permitted portable source (e.g., asphalt plants, crushers, etc.) shall have its emission permit number permanently and prominently displayed on each major component of equipment that is a part of that portable source.

D. Exemption from Permit Requirements

1. The following sources are exempt because by themselves, or cumulatively as a category, they are deemed to have a negligible effect on air quality:

   a. Those sources exempted from the filing of APENs in Section II.C. of this regulation except that for the purposes of this section, the exemption for residential structures shall be limited to single-family residential dwellings.

   b. Commercial laundries (except dry cleaners) which do not burn liquid or solid fuel.

   c. Stationary Internal Combustion Engines (rescinded effective October 1, 1983):

      (i) in ozone nonattainment areas if the rated horsepower is less than 250.

      (ii) in all other areas if the rated horsepower is less than 1,000.

      (iii) where in (i) and (ii) above the horsepower exceeds the listed limitations but is used for emergency power generation only and does not operate more than 250 hours per year.

   c. Stationary Internal Combustion Engines (effective October 1, 1983):

      (i) internal combustion engines powering portable drilling rigs.

      (ii) emergency power generators which operate no more than 250 hours per year.

      (iii) with emissions less than five tons per year or rated horsepower of less than 50.

   d. Construction or alteration of single family residential dwellings, including home heating devices.

   e. Sources having uncontrolled emissions of any pollutant of less than one ton per year, with the exception of sources of any emissions of hazardous, toxic, or odorous pollutants.

2. Sanding of streets and roads to abate traffic hazards caused by ice and snow.

3. New indirect sources are exempt until a permit regulation specific to indirect sources is promulgated by the Commission.

4. The provisions of this subsection III.D. do not exempt open burning operations, agricultural or otherwise, from permit requirements of Commission Regulation No. 1.

5. Sources having uncontrolled emissions of one ton per year but less than five tons per year are presumed, for the purposes of this section, to have a negligible impact on air quality and are exempt from a permit requirement, with the exception of one ton per year or greater sources of volatile organic compounds in ozone nonattainment areas and any source of emissions of hazardous, toxic, or odorous pollutants, unless the Division rebuts such presumption by demonstrating one of the following:

   a. The maximum ambient concentration of SO_2, TSP, NO_2, or CO resulting from the source's uncontrolled emissions equals or exceeds the value in the "Table of Significance Levels" in Regulation 3, Section IV.D.2.b.(ii).

   b. Uncontrolled emissions from the source or in combination with emissions from similar sources would cause or contribute to ambient concentrations of any pollutant in any attainment or unclassifiable area which would result in exceeding the maximum allowable increase in concentration (increment) or the applicable ambient air quality standard for such pollutant.

   c. Uncontrolled emissions from the source or in combination with emissions from similar sources would interfere with reasonable further progress toward the attainment and maintenance of the applicable ambient air quality standard for such pollutant in any nonattainment area.

   d. Uncontrolled emissions from the source or in combination with emissions from similar sources would adversely affect public health or welfare.

IV. EMISSION PERMIT REVIEW PROCEDURES

A. Option for Pre-Application Meeting

Prior to submitting an application for a permit an applicant may request and, if so requested, the Division shall grant, a pre-application meeting with the applicant. At such meeting, the Division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications and the data required to be furnished with the permit application.

B. Application for an Emission Permit

1. An application for an Emission Permit shall be prepared on forms currently supplied by the Division.

2. Applications shall be signed by a person legally authorized to act on behalf of the applicant. The applicant shall furnish all information and data required by the Division to evaluate the permit application and to make its preliminary analysis in accordance with Section IV.B.4.

3. An application for an Emission Permit will not be deemed to be complete until all information and data required to evaluate the application have been submitted to the Division. Within twenty (20) calendar days after the receipt of an application or any supplemental information timely requested by the Division, the Division will give notice to the applicant if and in what respect the application is incomplete. If the Division fails to notify an applicant that its application is incomplete within twenty (20) calendar days of receipt of the original application or receipt of the requested supplemental information, the application shall be deemed to have been complete as of the day of receipt by the Division of the application or the last submitted supplemental information, whichever is later.

4. Within sixty (60) calendar days after receipt of a complete permit application the Division shall prepare its preliminary analysis. The preliminary analysis is to allow the Division to determine whether the new source will, at date of commencement of operation, comply with:

   a. all applicable emission control regulations,

   b. applicable regulations for the control of hazardous pollutants

   c. requirements of the attainment program (IV.D.2. and IV.D.3.)

   d. National Ambient Air Quality Standards (NAAQS) or, where no NAAQS have been established for the pollutant(s), applicable State Ambient Air Quality Standard(s).

   The preliminary analysis shall indicate what impact, if any, the new source will have (as of the projected date of commencement of operation) on all areas (Attainment, Nonattainment, Unclassifiable), within the probable area of influence of the proposed source. If so requested on the permit application form, a copy of this preliminary analysis shall be forwarded to the applicant postmarked no later than fifteen (15) calendar days after the completion of the preliminary analysis.

When the preliminary analysis includes modeling, the model used shall be an appropriate one given the topography, meteorology and other characteristics of the region which the source will impact. The model should also meet EPA requirements if possible.

C. Public Comment and Hearing Requirements

1. The following sources, unless exempted in Section IV.C.2. below, are subject to public comment:

   a. Sources with projected controlled annual emissions of any pollutant for which an ambient air quality standard has been designated, where such emissions will be greater than twenty-five (25) tons per year.

   b. Sources for which preliminary analysis indicates a possible violation of Commission Regulation No. 2 (odor emissions).

   c. Sources of pollutants which are regulated under Air Quality Control Commission Regulation No. 8 or which are otherwise "Hazardous Air Pollutants" as defined in Act (C.R.S. 1973, 25-7-103(13)).

2. The following sources are generally not required to be subject to public comment, unless the Division determines that public comment is warranted pursuant to subsection 3., below:

   a. Sources of six months duration or less, except that public comment shall be required for all sources of hazardous pollutants without regard to the duration of the operation of such source unless specifically exempted below.

   b. Demolition projects, even if asbestos materials are present, provided that all the requirements of Regulation No. 8 are followed for any and all materials suspected of containing asbestos.

3. Sources for which a permit is required, but for which public comment is not required by Sections IV.C.1. or IV.C.2., above, are exempt from public comment requirements unless the Division determines that public comment is warranted. In making such determinations, the Division shall take into consideration the duration of the operation, its location, the nature and projected amount of emissions, anticipated public concern, and other relevant factors.

4. When public comment is required by Section IV.C.1. or when the Division determines, pursuant to Section IV.C.3. that an application warrants public comment, the Division shall, within fifteen (15) calendar days after the preparation of the preliminary analysis, cause public notice of the application to be published in a newspaper of general distribution in the area in which the proposed project or activity is or will be located, and a copy of the preliminary analysis and application to be filed with the county clerk(s) for the county(ies) in which the source is or will be located and shall send written notice to persons requesting notice of permit applications for the type of area or source affected. For sources subject to the provisions of Section IV.D.3., the public notice shall also be published in a newspaper of statewide distribution. Such notice shall state:

   a. The location and nature of the proposed activity or project for which an emission permit application has been filed.

   b. The locations where the application and preliminary analysis are available for public inspection.

   c. That comments concerning the ability of the proposed project or activity to comply with the applicable standards and regulations of the Commission are solicited from any interested person.

   d. That the Division will receive and consider public comments for thirty (30) calendar days after such publications.

   e. Additionally, for permit applications subject to the requirements of Section IV.D.3 of this Regulation No. 3:

      (i) that comments are solicited on an innovative technological system for pollution control if proposed by the applicant and that a hearing by the Board will be held on such system if requested by any interested person;

      (ii) that comments are solicited on the air quality impacts of the source or modification;

      (iii) that comments are solicited on alternatives to the source or modification;

      (iv) that any interested person may submit a written request for a public hearing to be held by the Board to receive evidence and comments regarding the foregoing concerns, the sufficiency of the preliminary analysis, and whether the permit application should be approved or denied.

5. A copy of the preliminary analysis and permit application of sources subject to the requirements of Section IV.D.3. of this Regulation No. 3. shall be sent to the county commissioners in all affected counties.

6. Within fifteen (15) calendar days after the preparation of the preliminary analysis for those applications subject to the requirements of Section IV.D.3. of this Regulation No. 3, the Division shall forward to the applicant written notice of the applicant's right to a formal hearing before the Board with respect to the application. A hearing requested by the applicant shall be combined with a hearing requested by any interested person.

7. A hearing request pursuant to Section IV.C.4.e.(i) must be transmitted by the Division to the Board within twenty (20) days after its receipt.

8. A hearing request pursuant to Section IV.C.4.e.(iv) must be transmitted by the Division to the Board, along with the complete permit application, the preliminary analysis, and any written comments received by the Division within five (5) days after the end of the thirty day comment period.

9. The Board shall hold a hearing within sixty (60) days of its receipt of the request for a hearing pursuant to Section IV.C.4.e.(i) or Section IV.C.4.e.(iv), but at least 60 days after receipt by any Federal Land Manager of notice and the permit application pursuant to Section XIV.A. The Division will appear as a party at the hearing and provide to the Board its response to the public comments received and its recommendations. Where both types of hearings are requested, they shall be combined, if possible. At least thirty (30) days prior to such hearings, notice thereof shall be mailed by the Board to the applicant, to any interested person who submitted a request for a public hearing and to any Federal Land Manager given notice pursuant to Section XIV.A., printed in a newspaper of general distribution in the area of the proposed source or modification, and submitted for public review with the county clerk and recorder of the county wherein the source or modification is located. Except as provided herein and in the notice, such hearings will be conducted pursuant to the Act, the Procedural Rules of the Air Quality Control Commission and the Air Quality Hearings Board (5 CCR 1001-1 et seq.) and the State Administrative Procedure Act, C.R.S. 1973, 24-4-101 et seq.

10. Following a decision by the Board to issue a permit or not to issue a permit after review of a certification of no adverse impact to air quality related values pursuant to Section XIV.D., the Commission shall, at the request of any interested person or the permit applicant consider whether such decision may interfere with the objectives of the Act

pursuant to its authority under CRS 1973, 25-7-119(9). If the Commission determines that the Board's decision to issue a permit or not to issue a permit may interfere with the objectives of the Act, it shall hold a hearing pursuant to its authority under CRS, 1973, 25-7-119(9).

D. Emission Permit Review Requirements.

1. Requirements applicable to all permit applications.

Within thirty (30) calendar days following the completion of the Division's preliminary analysis for applications not subject to the public comment, within thirty (30) calendar days following the period for public comment for applications subject to public comment, or if a hearing is held, within thirty (30) calendar days following such hearing, the Division or the Board, as the case may be, shall grant the permit if it finds that:

a. The proposed source or activity will meet all applicable emission control regulations and regulation for the control of hazardous air pollutants contained in the State Implementation Plan;

b. The proposed source or activity will meet the applicable requirements of the attainment program as outlined in Section IV.D.2. , if any;

c. The proposed source or activity will not cause an exceedance in any attainment area of any NAAQS;

d. Where no NAAQS has been established for a particular pollutant, the proposed source or activity will meet all applicable regulations and will not interfere with attainment and maintenance of any applicable State Ambient Air Quality Standards;

e. The proposed source or modification will meet the applicable requirements of the prevention of significant deterioration program of Section IV.D.3.

[PROVIDED HOWEVER, that the Division shall not deny a permit for failure of the proposed source to meet any applicable requirement of the State Implementation Plan where (1) there is pending an application for a revision to the SIP pursuant to CRS 1973, 25-7-305 (Alternative Emission Reduction) which, if adopted, would require the Division to grant the permit and (2) the applicant waives the time constraints on the Division to act on its application until the Board or the Commission has issued its final decision on the request for a SIP revision and EPA has acted on the proposed revision to the SIP. In such circumstances, the Division shall delay its decision on the permit application until after final action on the request for revision of the SIP (including action by EPA).]

2. Requirements Applicable to Nonattainment Areas (Attainment Program)

a. Major Stationary Sources.

For any new major stationary source or major modification where the projected emissions would cause or contribute to ambient concentrations exceeding a NAAQS, the Division shall grant a permit if it determines that the following conditions, as well as those in paragraph IV.D.1., will be met:

(i) The proposed source will achieve the lowest achievable emission rate (LAER) for the specific source category.

(ii) The applicant has certified that all other existing major stationary sources owned, operated, or controlled by the applicant (or any entity controlling, controlled by, or under the common control with the applicant) in Colorado are in compliance with the requirements of the State Implementation Plan or are subject to and in compliance with an enforceable compliance schedule.

(iii) Prior to the date of commencement of operations, emission reductions (offsets) greater than one for one must be obtained from existing sources within the non-attainment area for each pollutant, or its precursors, for which the area is non-attainment.

Offsets must represent reasonable further progress towards attainment of the NAAQS when considered in connection with other new and existing sources of emissions. In addition, offsets for total suspended particulates, sulfur oxides, and carbon monoxide must show, through atmospheric simulation modeling, a positive net air quality benefit in the area affected by the emissions. Provided, however, that offsets meeting the requirements of this section (iii) may also be obtained from existing sources outside the non-attainment area if the applicant demonstrates:

(A) a greater air quality benefit may thus be achieved; or

(B) sufficient offsets are not available from sources within the non-attainment area.

With respect to offsets obtained from outside the non-attainment area, the Division may increase the ratio of the required offsets to new emissions the greater the distance such offsets are from the new or modified source.

(iv) For those sources proposing to locate in non-attainment areas for ozone or carbon monoxide (or both) and the source has the potential to emit in excess of 100 tons/yr. of carbon monoxide or volatile organic compounds, the permit application shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source which demonstrates that benefits of the proposed new source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(v) Offsets for which emission reduction credit is taken must be enforceable through permit conditions or source specific SIP revisions.

(vi) The applicant will demonstrate that emissions from the proposed source will not adversely impact visibility in a Class I area. This demonstration shall be reviewed by the Federal Land Manager and any determination made by the Federal Land Manager shall be considered in the Division's decision to grant the permit. If an adverse impact is predicted by the Division, the permit application will be denied. Federal Land Manager involvement shall follow the same procedures as stated in Seciton XIV.A. of this Regulation. The demonstration will be performed using either techniques described in the latest version of the EPA document entitled "Workbook for Estimating Visibility Impairment" and other techniques approved by the Division.

b. Exemptions from Certain Non-attainment Area Requirements:

(i) The following are exempt from the major stationary source criteria of IV.D.2(a)(iii).

(A) Portable sources which will relocate outside a non-attainment area in less than one (1) year.

(B) Each pilot plant that operates an aggregate of less than six (6) months.

(C) Construction phases of a new or modified building, facility, structure, or installation. These may, at the discretion of the Division, exceed a period of one (1) year.

(D) Other temporary processes or activities of less than one (1) year duration.

(E) Sources undergoing fuel switches as required by federal order or through lack of an adequate fuel supply if the Division determines that:

(1) The applicant has used his best efforts in seeking the required emission offsets but was unsuccessful;

(2) All available emission offsets were obtained;

(3) The applicant will continue to seek emission offsets as they become available.

(F) Resource recovery facilities burning municipal solid waste for the purpose of producing heat energy, providing they meet the requirements of Section IV.D.2.b.(i)(E) and that they utilize solid waste to provide more than 50% of the heat input.

(ii) Major sources locating in a clean portion of a non-attainment area (or which will be a clean portion as of the commencement of operation) are exempt from the requirements of Section IV.D.2.a.(i) through (v) if:

(A) The source applies reasonably available control technology, and

(B) The applicant demonstrates through appropriate analysis, monitoring data, or air quality modeling that the allowable emissions from the source (not including any emission reduction offsets achieved elsewhere in the source) would not cause the following significance levels to be exceeded in the actual area of non-attainment:

TABLE OF SIGNIFICANCE LEVELS

Pollutant	Averaging Time				
	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO_2	1.0 ug/m^3	5 ug/m^3		25 ug/m^3	
TSP	1.0 ug/m^3	5 ug/m^3			
NO	1.0 ug/m^3				
CO			500 ug/m^3		2000 ug/m^3

The applicant shall bear the burden of proof that the source is locating in a clean portion of a non-attainment area, but in any case, exemptions do not apply to major sources of hydrocarbons locating in an ozone non-attainment area.

c. Minor Sources

For minor sources where the emission would cause or contribute to ambient concentrations which exceed a National Ambient Air Quality Standard in designated non-attainment areas, permits shall be issued if, in addition to determining that the source will meet the requirements of paragraph IV.D.1., the Division determines that Reasonably Available Control Technology (RACT) will be applied and the applicant has adequately demonstrated that reasonable further progress toward the attainment of the National Ambient Air Quality Standards will not be impaired as outlined in the SIP.

3. Requirements Applicable to Attainment and Unclassifiable Areas (Prevention of Significant Deterioration Program). Until the Prevention of Significant Deterioration program regulations, including Sections IV.D.3. (except IV.D.3.e.), X, XI, and XIV applicable to new major stationary sources and modifications, have been approved by the Environmental Protection Agency, all major stationary sources and modifications locating in attainment areas will have to meet the requirements of Section IV.D.1, except that new major stationary sources and modifications locating in attainment areas are subject to the maximum allowable increases of Section VIII.B. and those provisions of Section X, XI, and XIV necessary to the application of VIII.B. Upon EPA approval, major stationary sources and major modifications locating in attainment areas must met the requirements of this Section IV.D.3 as well as Section IV.D.1. All other

sources (major and minor) are, and will continue to be following EPA approval, subject to the requirements of Section IV.D.1.

a. Major Stationary Sources and Major Modifications.

The requirements of this Section IV.D.3. shall apply to any major stationary source and any major modification with respect to each pollutant regulated under the Act and the Federal Act that it would emit, except as this Regulation No. 3 would otherwise allow. For permit applications on which an interested person has requested a hearing pursuant to Section IV.C.4.e.(iv), the Board shall make the decisions and determinations otherwise delegated to the Division.

For any new major stationary source or major modification proposing to construct in any area in Colorado designated under Section 107(d) of the Federal Act as attainment or unclassifiable for any criteria pollutant as of the date of submittal of a complete application under this Regulation No. 3, the Division shall grant a permit if it determines that the following requirements, in addition to those in paragraph IV.D.1., have been or will be met:

(i) Control Technology Review.

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

(B) A major modification shall apply best available control technology for each pollutant regulated under the Act or Federal Act for which there would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change in or change in the method of operation of the unit.

(C) For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate for phases which commence construction more than 18 months after the initial granting of the permit. The review will be conducted in a timely manner which will allow the owner or

operator to proceed with scheduled construction of the source. During the review, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

(ii) Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate to the Division that allowable emission increases from the proposed source or modification in conjunction with all other emissions increases or reductions (including secondary emissions) will not cause or contribute to concentrations of air pollutants in the ambient air in violation of:

(A) Any state or national ambient air quality standard in any baseline area or air quality control region; or

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

(iii) Preconstruction Monitoring and Analysis

(A) An analysis of ambient air quality in any area that would be affected by the proposed major stationary source or major modification shall be performed for each pollutant regulated under the Act or Federal Act which the source or modification would emit or have the potential to emit in a significant amount, or for which there would be a significant net emissions increase.

(B) With respect to any such pollutant for which no national ambient air quality standard exists and for which there is an acceptable method for the monitoring of that pollutant, the analysis shall contain such air quality monitoring data as the Division determines is reasonably necessary to assess ambient air quality for that pollutant in any area that emissions of that pollutant would affect.

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

(D) In general, the continuous air quality monitoring data that is required under subparagraph (C) or the pre-application monitoring of air quality related values required by Section XIV.B. shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that the Division may determine that a complete and adequate analysis can be accomplished (1) with monitoring data gathered over a period shorter than one year (but not to be less than four months); or (2) by the use of existing representative air quality data. When existing background ambient air levels of a pollutant are reasonably estimated to be small and a monitoring network would not reliably measure the predicted background concentrations, the Division has the discretion to not require a source owner or operator to generate preconstruction monitoring data for that pollutant.

(E) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 C.F.R. Part 51, Appendix S, Section IV, (but not including conditions resulting from amendments after March 10, 1983) may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subparagraph (A). (Information on obtaining 40 CFR Part 51, Appendix F, Section IV is available from the Director, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado, 80220.)

(iv) Post-Construction Monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct ambient monitoring for a period up to one year unless additional monitoring is necessary to determine the effect emissions from the stationary source or modification have or may have on air quality in any area. The monitoring of air quality related values (AQRVs) or sensitive receptors required by Section XIV.B. shall be for such time as is necessary to determine the effect emissions from the source or modification will have on the AQRVs or sensitive receptors. Post-construction monitoring requirements will be permit conditions.

(v) Operation of Monitoring Stations. The owner or operator of a major stationary source or major modification shall use EPA accepted procedures for ambient monitoring as approved by the Division during the operation of monitoring stations for purposes of satisfying the requirements of subparagraph (iii) and (iv) of this paragraph.

(vi) Additional Impact Analysis. For each pollutant which is regulated under the Act or the Federal Act and which the source or modification would emit or for which there would be a significant net emissions increase, the owner or operator shall provide an analysis of the impairment to visibility, water, soils, and vegetation that would occur as a result of the emissions of such pollutant from the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The analysis of impairment to water will not be used in the determination of best available control technology. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

b. Applicability of Certain PSD Requirements.

(i) The requirements of Section IV.D.3.a. do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant:

(A) the source or modification is subject to Part 3 of the Act and Section IV.D.2. of this Regulation No. 3, and the source or modification would not impact any area designated as attainment or unclassifiable for that pollutant; or

(B) with clear and convincing evidence that the emissions from the source or modification would be fugitive dust; or

(C) the emissions from the source or modification would not be significant; or

(D) the source or modification is a portable stationary source which has previously received a permit under requirements equivalent to those contained in Section IV.D.3.a. of this regulation or Paragraphs (j) through (r) of 40 C.F.R. Section 51.24, if:

(1) the source proposes to relocate and emissions of the source at the new location would be temporary;

(2) the emissions from the source would not exceed its allowable emissions;

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

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

(ii) The requirements contained in Sections IV.D.3.a.(ii) through (vi) do not apply:

(A) to a proposed major stationary source or major modification with respect to a particular pollutant, if the emissions would be from a temporary source, modification or activity, such as

constructon or exploration, and would not have an impact on air quality in any Class I area or an area where an applicable increment is known to be violated; or

(B) as they relate to any maximum allowable increase for a Class II area, to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the Act from the modification after the application of best available control technology would be less than 50 tons per year.

(iii) The requirements of Section IV.D.3.a.(iii) through (v) do not apply to a major stationary source or a major modification with respect to monitoring for a particular pollutant if:

(A) The emissions of the pollutant from the new stationary source or the net emissions increase of the pollutant from the modification would cause air quality impacts, in any area, less than the following amounts referred to a temperature of 25°C and a pressure of one atmosphere (1013 millibars):

(1) Carbon monoxide-575 ug/m^3, 8-hour average;

(2) Nitrogen dioxide-14 ug/m^3, annual average;

(3) Total suspended particulates-10 ug/m , 24-hour average;

(4) Sulfur dioxide-13 ug/m^3, 24-hour average;

(5) Lead-0.1 ug/m^3, 24-hour average;

(6) Mercury-0.25 ug/m^3, 24-hour average;

(7) Beryllium-0.0005 ug/m^3, 24-hour average;

(8) Fluorides-0.25 ug/m^3, 24-hour average;

(9) Vinyl chloride-15 ug/m^3, 24-hour average;

(10) Total reduced sulfur-10 ug/m^3, 1-hour average;

(11) Hydrogen sulfide-0.04 ug/m^3, 1-hour average;

(12) Reduced sulfur compounds-10 ug/m^3, 1-hour average; or

(B) The existing concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in this paragraph; or

(C) For ozone, the emissions increase or net emissions increase of volatile organic compounds from the source or modification would be less than 100 tons per year; or

(D) The pollutant is not referred to in this subsection.

(iv) The requirements of Section IV.D.3.a. shall apply at such time that any stationary source or modification becomes a "major stationary source" or "major modification" solely by virtue of a relaxation in any enforceable limitation, which was established after August 7, 1980, on the capacity of the source or modification to otherwise emit a pollutant, such as a restriction on hours of operation.

c. Notice to EPA.

The Division shall transmit to the Administrator of the United State Environmental Protection Agency a copy of each permit application relating to a major stationary source or major modification subject to this regulation, and provide notice of every action related to the consideration of such permit.

d. Major Sources in Attainment Areas Affecting Nonattainment Area.

(i) For any new major stationary source or major modification which is proposing to construct in an area designated under Section 107(d) of the Federal Act as attainment or unclassifiable for a particular pollutant and the emissions of such pollutant from which

would significantly affect ambient air quality in an area designated as nonattainment for such pollutant, the Division shall grant a permit if it determines that one or both of the following conditions, as well as those in Sections IV.D.1. and IV.D.3.a., will be met:

(A) The proposed source or modification will meet the requirements of Section IV.D.2.a.(i) and (ii) and obtain sufficient emission reductions of such pollutant in the nonattainment area to offset that portion of its emissions of such pollutant which affect the nonattainment area. Offsets may be obtained from outside the nonattainment area as provided in Section IV.D.2.a.(iii) of this Regulation No. 3.; or

(B) The proposed source or modification will achieve an emissions rate which will ensure that the emissions of such pollutant from the source or modification will not significantly affect ambient air quality in the nonattainment area.

(ii) Ambient air quality will be deemed to be "significantly affected" if, but for any offsets, the applicable significance level set forth in the table in Section IV.D.2.b.(ii)(B) would be exceeded in the nonattainment area.

(iii) Any new major stationary source or major modification subject to this paragraph which will emit or cause a net emissions increase in volatile organic compounds shall demonstrate to the satisfaction of the Division that its emissions will not affect any ozone nonattainment area or shall obtain offsets as required in Subparagraph (i), above.

(iv) Emission offsets for total suspended particulates, sulfur dioxide, and carbon monoxide, must show, through air quality modeling, a positive net air quality benefit in the portion of the nonattainment area affected by emissions from the proposed source or modification.

4. Negligibly Reactive VOCs (NRVOCs)

a. The following NRVOCs are considered of negligible photochemical reactivity and are neither counted as reactive volatile organic compounds (VOC) in determining VOC emission contributions to an increase in ozone nor used as VOC emission offsets or other VOC emission trading credits against VOCs not listed below:

Methane
Ethane
1,1,1-Trichloroethane (Methyl Chloroform)
Methylene Chloride
Trichlorofluoromethane (Freon-11)
Dichlorodifluoromethane (Freon-12)
Chlorodifluoromethane (Freon-22)
Trifluoromethane
Trichlorotrifluoroethane (Freon-113)
Dichlorotetrafluoroethane (Freon-114)
Chloropentafluoroethane (Freon-115)

b. NRVOCs may be substituted for VOCs and the resulting decrease in VOCs emissions, if otherwise creditable, may be used for offset, banking or other emission trading credit.

E. Permit Terms and Conditions

The Division shall include such terms and conditions in any permit as it deems necessary for the proposed project or activity to qualify for the permit; except that the only terms or conditions of a permit which may be enforced after final approval has been granted are those specifically described in section IV.D. as conditions required to be found for the granting of a permit. All other terms and conditions of the permit shall terminate upon the granting of final approval by the Division pursuant to paragraph IV.H.

F. Time Constraints on Division Action

If the Division fails to grant or deny the permit application within the time prescribed, the permit shall be deemed to have been granted unless the applicant therefor shall have expressly waived such time limitation. The applicant may limit its waiver to a specified length of time or to a specified date.

G. Denial or Revocation of the Emission Permit

1. If the Division determines that a source cannot comply with the provisions of section IV.D. of this regulation, the Division shall issue its written denial of the permit application stating the reasons for such denial. Any Division denial of an emission permit shall become final

upon mailing of the denial notice to the applicant by certified mail. The applicant may appeal the Division's final denial of a permit as provided in paragraph IV.G.3. below.

2. Any applicant for an emission permit shall advise the Division in writing of any refusal to accept any permit condition imposed by the Division within twenty (20) calendar days after receipt of the permit. Such refusal shall be deemed a denial of the permit application.

3. If the Division denies a permit, conditions imposed upon a permit are contested by the applicant, or the Division revokes a permit, or the Division requires a permit from a source which may qualify for an exemption the applicant or owner or operator of a source may request a hearing before the Air Quality hearings Board for review of the Division's action. The hearing shall be heard in accordance with the provisions of C.R.S. 1973, 25-7-114(4)(h) and 25-7-119 (Colorado Air Quality Control Act) and C.R.S. 1973, 24-4-105 (State Administrative Procedure Act).

4. a. An initially approved permit shall expire if the owner or operator of the source for which the permit was issued (i) does not commence construction or operation of the source within 18 months after either the date of issuance of the permit or the date on which such construction or activity was scheduled to commence as set forth in the permit, whichever is later, (ii) discontinues construction for a period of 18 months or more, or (iii) does not complete construction within a reasonable time of the estimated completion date.

   b. Upon a showing of good cause by the permittee the Division may grant extensions of the permit, not to exceed 18 months per extension. Construction or operation shall commence or be resumed within a reasonable period of time from the granting of the extension. In determining what constitutes good cause or a reasonable period of time, the Division shall consider the degree of construction already completed, the amount invested or legally committed to the project, whether an extension would prevent (e.g., through reservation of a PSD increment) economic development in the affected area, general economic conditions, the health of the community as it affects the ability of the permittee to proceed, and other relevant factors. The Division shall notify the Commission of any requested extensions and the reason given for each request.

   c. This subsection 4 shall not apply to sources which have received an initially approved permit on or prior to the effective date of this regulation.

H. Final Permit Approval

1. Unless prior and mutually acceptable arrangements have been made, the applicant shall not commence the operation of a stationary source for which an emission permit has been issued or reinstated without giving notice to the Division, thirty (30) calendar days (fifteen (15) calendar days for portable sources) prior to the date on which commencement will take place.

2. Within thirty (30) calendar days after Commencement of operation, the Division shall inspect the source to determine whether or not the operating terms and conditions of the emission permit have been satisfied. However, for major sources with more than one building, structure, facility, piece of equipment or installation which are governed by one permit, the Division may make arrangements with the applicant for phasing of commencement of operation and inspection periods as may be appropriate for such source.

3. Before final approval of the permit is granted, the Division may require the applicant to conduct and pay for performance tests in accordance with methods approved by the Division. The Division may monitor such tests and may, at its expense, conduct its own performance tests.

4. If, prior to final approval, the Division finds the terms or conditions of the permit have been violated, it may revoke the permit or grant a period of not more than six (6) months in which to meet the terms or conditions. The Division may impose reporting or other requirements during such period after commencement of operations. Although no requirements of the State Implementation Plan may be violated during such period, any temporary non-compliance will not be deemed a violation of such requirements provided that:

   a. The Division is notified of the non-compliance as soon as possible, but no later than two (2) hours after the start of the next working day; and

   b. Such notice is followed by a written explanation of the cause of non-compliance, and explaining what proper action has been or is being taken to correct the conditions causing the non-compliance, and explaining what proper action is being taken to eliminate or minimize violations until the cause thereof can be remedied.

   c. The Division shall revoke the permit if violations continue and it determines the remedial action being taken by the applicant does not represent a good faith effort to correct the non-compliance as expeditiously as possible or that the action being taken will not result in compliance within the period granted.

5. If the Division determines that the terms and conditions of the emission permit have been satisfied, the Division shall issue in writing its final permit approval to the applicant. Otherwise, the Division shall revoke the permit.

6. The Division may grant an applicant a period greater than the six-months provided for in Section IV.H.4. in which to bring a source into compliance with the terms and conditions of its permit if all of the following requirements are met:

   a. The non-compliance is a direct result of the use or application of an innovative technological system(s) of continuous emission reduction.

   b. Such additional period shall not exceed six (6) months.

   c. The applicant submits a written request to the Division for such additional period which demonstrates to the satisfaction of the Division:

      (i) Achieving compliance within six (6) months of commencement of operation is not technically possible.

      (ii) The granting of such additional period will not interfere with reasonable further progress towards attainment of National Ambient Air Quality Standards in non-attainment areas.

      (iii) Non-complying operation of the source during such additional period of time shall be limited to that necessary to bring the source into compliance with the terms and conditions of its permit. In other words, if the modifications and adjustments necessary to bring the source into compliance with the terms and conditions of its permit may be made without operation of the source in violation of any standard or regulation or may be made during operation at a reduced rate so as to minimize such violations, non-complying operation must cease or be limited to the extent not required to make the necessary modifications and adjustmens.

   d. All requirements of Section IV.H.4. are met.

   e. The Commission, at a public meeting and after notice to the public, concurs in the decision of the Division to grant such extended compliance period. For the purposes of this provision, inclusion of the Commission's consideration of the matter on its meeting agenda shall constitute sufficient notice to the public.

V. CERTIFICATION AND TRADING OF EMISSION REDUCTION

A. PURPOSE

This section establishes procedures for the recording of certified emissions reductions and for their use in bubble, netting or offset transactions. These procedures are intended:

1. To promote economic development and lower the cost of meeting pollution control requirements while assuring ambient air quality progress and continued air quality maintenance;

2. To encourage development of innovative pollution control methods and technologies;

3. To conserve administrative resources by reducing the number of trades that require revision of the State Implementation Plan ("SIP").

B. SCOPE

This section applies to any pollutant regulated under the Colorado Air Quality Control Act or the regulations promulgated thereunder in all attainment and nonattainment areas of the state.

C. DEFINITIONS

1. "Base level" means the level of emissions, as calculated under subsection E. of this section, below which reductions in emissions must be made in order for such reductions to be certified.

2. "Bubble" means a proposal to meet the applicable requirements of the SIP for a given air pollutant for two or more facilities or operations within a source through a combination of different requirements which separately may be more or less stringent than the applicable requirements of the SIP for each source.

3. "Certified emissions reduction" means a reduction in emissions below the base level, which has been certified by the Division in accord with the criteria of subsection E. of this section and which may then be used in a bubble, netting, or offset transaction.

4. "Criteria pollutant" means an air pollutant for which a National Ambient Air Quality Standard ("NAAQS") has been promulgated.

5. "Hazardous emission" means an emission of a hazardous air pollutant.

6. "Netting" means using a certified emissions reduction to limit the net increase in plant-wide emissions from an expanding or modernizing source to an insignificant amount, for the purpose of obtaining an exemption from new source review otherwise required by Commission regulations No. 3 and 6.

7. "Non-inventoried source" means any source which has not been recorded on the Division's emission inventory sub-system.

8. "Offset" means a transaction in which a certified emissions reduction is used either to avoid causing a violation of an increment in an attainment area, or to meet the requirements of section IV.D.2.a.(iii), regarding the maintenance of reasonable further progress towards attainment of the NAAQS in nonattainment areas.

9. "Registry" means the Division's record of the certification and use of emissions reductions.

D. PROCEDURE FOR CERTIFICATION OF EMISSIONS REDUCTIONS AND APPROVAL OF TRANSACTIONS

1. The owner or operator of any source who has cause to believe that, prior to the effective date of this section, an emissions reduction has occurred at the source which meets the criteria for certification, may apply to the Division to certify the reduction. Such applications shall be filed with the Division within one year after the effective date of this section.

2. The owner or operator of a source may request the Division to certify any emissions reduction anticipated to occur after the effective date of this section, provided the owner or operator files his application prior to the occurrence of the reduction, at a time at which the source is emitting the base level of the subject pollutant.

3. Upon receiving an application for certification, the Division may require the applicant to submit all data and calculations necessary to verify the base level, or the reduction of emissions below the base level, including, but not limited to, documentation of operating hours and inputs. The Division may also require the applicant to perform source tests to establish the base level or the reduction of emissions below the base level. The Division shall not certify reductions anticipated to occur after the effective date of this regulation until the reductions have occurred and been verified.

4. The Division shall maintain an emissions reduction registry, in which it shall maintain a record of all certified emissions reductions, and of the use of certified emissions reductions in bubble, netting, or offset transactions. The information contained in such registry shall include the name and address of the owner or operator of the source creating the emissions reduction, the location of the source, its stack parameters, the temperature and velocity of its plume, particle size, the existence of any hazardous pollutants, daily and seasonal emission rates, and any other data which might reasonably be necessary to evaluate future use.

5. If the Division determines to grant certification, it shall modify the permit of the applicant to provide that the allowable emissions are equal to the level of current emissions utilized in the calculation of the emissions reduction. The owner or operator of a source not required to obtain a permit by provisions of law other than this section shall be required to apply for and accept a permit as a condition of obtaining a certified emissions reduction. Such permits shall contain only those conditions necessary to ensure the enforcement of the emissions limitations applicable to the source as a result of certification of its emissions reduction.

6. The amount of the emissions reduction to be certified and entered in the registry shall be calculated as follows:

   a. For any emissions reduction which has occurred in an attainment area, the amount of the certified emissions reduction shall be 90 percent of the amount by which emissions have been reduced below the base level.

   b. For any emissions reduction which has occurred in a non-attainment area, the amount of the certified emission reduction shall be 80 percent of the amount by which emissions have been reduced below the base level.

7. An application may be filed for approval of the use of a certified emissions reduction in a bubble, netting, or offset transaction simultaneously with the filing of a certification application, or within seven years after certification has been granted. If the transaction would require the modification of permits held by more than one person, the application shall be jointly submitted by all potentially affected permittees. The Commission shall determine whether to approve all bubble transactions, or any offset transactions which, pursuant to subsection H, require a SIP revision. The Division shall determine whether to approve all netting transactions, or any offset transactions for which no SIP revision is required.

8. Applications for certification of emissions reductions and approval of transactions shall be made on forms provided by the Division.

9. Where the owner or operator of a source requests a SIP revision pursuant to this section V, the Commission shall set a hearing on the proposed revision to be held in accord with the procedures set forth in section 25-7-119, C.R.S. (1982). With respect to applications for certification of emissions reductions, or for approval of any netting transactions, or offset transactions within the Division's jurisdiction under section V.H.2., the following procedures shall apply:

   a. Within 20 days after receipt of an application, or information supplementing the initial submission of an application, the Division shall notify the applicant if, and in what respects, his application is incomplete.

   b. Within 60 days after receipt of a complete application, the Division shall issue to the applicant a preliminary analysis as to whether the application meets the criteria for certification of the emissions reduction, or approval of the subject transaction, as applicable.

   c. If the emissions reduction for which certification is sought, or the certified emissions reduction on which a transaction is based, exceeds 25 tons per year, or involves a hazardous pollutant regulated under the Commission's "Regulation No. 8," the Division, within 15 days after preparation of its preliminary analysis, shall cause notice of the application to be published in a newspaper of general circulation in the county(ies) in which the affected source(s) is located. The notice shall state the name and location of all affected sources and that the Division will consider public comments on the application received within 30 days. In notices of applications for certification, the notice shall state the amount of the emissions reduction and the pollutant for which emissions have been reduced. In notices of applications for approval of a transaction, the notice shall contain a brief description of the substance of the transaction.

   d. The Division shall grant or deny the application within 30 days after the public comment period closes, or, if the application is not subject to public comment, within 30 days after the preliminary analysis has been issued. The Division shall inform the applicant in writing of its decision.

e. If the Division denies the application, the applicant, within 30 days after issuance of the Division's decision, may request a hearing on the decision before the Commission. Such hearings shall be held in accord with the procedures set forth in section 25-7-119, C.R.S. (1982).

10. Applicants for certification of an emissions reduction, or for approval of any bubble, netting, or offset transaction, shall be assessed fees for time spent by Division personnel in evaluating such applications, in accord with the criteria for assessment of emissions permit fees set forth in section VI.C. Where more than one person applies for approval of a transaction, all such persons shall be jointly and severally liable for the fees assessed. Applicants shall be responsible for paying such fees regardless of whether the Division approves or denies an application.

11. The state shall not utilize a certified emissions reduction in making demonstrations of attainment, or reasonable further progress toward attainment of the NAAQS, within seven years after the date of certification, or at any time after an application for use of the certified emissions reduction in a transaction has been approved. Where no application has been filed for the approval of the use of a certified emissions reduction within seven years after certification was granted, the state shall subsequently utilize the reduction in making demonstrations of attainment, or reasonable further progress towards attainment, of the NAAQS. This seven-year period shall be tolled during any time in which there is a pending application before the Division or the Commission for approval of a bubble, netting, or offset transaction based on the certified emissions reduction.

12. Applications for approval of transactions involving total suspended particulates, sulfur dioxide, or carbon monoxide shall be subject to the following ambient air quality modeling requirements:

a. The applicant shall submit with his application modeling results regarding the ambient air quality impacts of the transaction, unless the following requirements are met:

(i) The effective plume height of the source at which the emissions reduction occurred is the same as or lower than that of the source using the emissions reduction.

(ii) All sources involved in the transaction are within 250 meters of each other.

(iii) The transaction does not entail allowing an increase in visible emissions from any source.

(iv) In terms of air quality impact, the chemical and physical composition of the subject pollutant is similar at each source involved in the transaction.

b. An applicant whose proposed transaction does not meet the requirements of section V.D.12.a. shall submit modeling in accord with (i) or (ii) below:

(i) The applicant shall submit modeling only for the sources involved in the transaction provided allowable emissions after the transaction would not cause a significant air quality impact at the receptor of maximum predicted impact. A significant air quality impact is one predicted to exceed 10 ug/m^3 for the 24-hour standard for total suspended particulates, 13 ug/m^3 for the 24-hour standard for sulfur dioxide, and 575 ug/m^3 for the 8-hour standard for carbon monoxide.

(ii) Any other applicant shall perform full diffusion modeling of all sources in the nonattainment area or prevention of significant deterioration (PSD) baseline area where the source using the certified emissions reduction is located.

13. Following the certification of an emissions reduction, if the Division determines that certification was granted on the basis of fraud or material misstatement or omission, the Division shall revoke certification of the reduction. Certification shall be revoked only after the owners or operators of the affected sources have received notice and, if requested, a hearing. In such cases the Division shall also modify the permit of the person who has used the emissions reduction, so that the permit will contain all conditions which would have applied if the emissions reduction had not been certified initially.

E. CRITERIA FOR CERTIFICATION OF EMISSIONS REDUCTIONS

An emissions reduction shall be certified for use in a bubble, netting or offset transaction, provided it meets the following criteria:

1. The emissions reduction shall have occurred on or after July 1, 1979, and shall be surplus. Surplus reductions are those below the base level. The base level shall be determined as follows:

a. In attainment areas, the base level shall be a source's actual emissions of the subject pollutant, or allowable emissions, whichever is lower. Ract shall be as set forth in the SIP for the source. Where RACT has not been determined in the SIP for the source, it shall be determined by the Division.

b. In nonattainment areas for which there is a demonstration of attainment of the NAAQS approved by the EPA, the base level shall be actual emissions, provided, however, the base level shall not exceed reasonably available control technology (RACT) as defined in the SIP or the level of emissions used by the state in making a demonstration of attainment.

2. No emissions reduction shall be certified if the Division has relied upon the occurrence of the reduction in demonstrating attainment of the NAAQS or reasonable further progress towards attainment, or in establishing a baseline concentration.

3. Each certified reduction of a pollutant's emissions shall be quantified in the same unit of measurement used in the standard or regulation applicable to the pollutant.

F. CRITERIA FOR APPROVAL OF ALL TRANSACTIONS

The use of an emissions reduction in a bubble, netting or offset transaction shall be approved only if it meets the following criteria:

1. The transaction shall involve only one pollutant.

2. No transaction shall be approved if it will result in an increased concentration, at the point of maximum impact, of hazardous air pollutants.

3. Where a significant fraction of a criteria pollutant stream has been listed as hazardous by the Commission under regulation No. 8 or the EPA under 42 U.S.C. S7412 but has not yet been regulated, emissions containing that pollutant from sources within 250 meters of each other may only be traded against each other on a greater than one to one basis which assures a net decrease in emissions of the hazardous pollutant.

4. Hazardous and non-hazardous emissions of the same criteria pollutant may be traded against each other, provided the total emissions containing the hazardous pollutant from the sources involved in the transaction are required to decrease as a result of the transaction.

5. No transaction may be approved which is inconsistent with any standard established by the Federal Act, the State Air Quality Control Act or the regulations promulgated under either.

6. No transaction shall be approved unless either:

   a. The source at which the emissions reduction occurred and the source using the emissions reductions are in the same nonattainment area or PSD baseline area; or

   b. The emissions reduction is to be used as an offset to meet the requirements of section IV.D.2.a.(iii) and the conditions of that section are met for the use of an offset obtained from a source outside the nonattainment area.

G. BUBBLE TRANSACTIONS

1. An owner or operator of an existing source may apply to the Commission for approval of a SIP revision establishing a bubble. The bubble shall establish new emissions limitations for two or more facilities or operations within the source.

2. The Commission shall not approve a bubble unless it meets the criteria for approval of subsection F., and the Division has first certified an emissions reduction at a facility or operation included in the bubble.

3. As part of the certification process, the amount of allowable emissions shall be reduced at the facility or operation where the emissions reduction has occurred in accord with section V.D.5. As part of the bubble approval, the Commission may approve an increase in the total allowable emissions at the other facilities or operations covered by the bubble, by an amount not to exceed the amount of the subject certified emissions reduction.

4. As part of the bubble approval, the Commission may extend compliance deadlines otherwise required by Commission regulations for volatile organic compounds or carbon monoxide emissions, provided the following criteria are met:

   a. If the source is located in a nonattainment area the area must have received an attainment extension from the EPA beyond December 31, 1982.

   b. The applicant must demonstrate to the satisfaction of the Commission that reasonable further progress toward the attainment of the NAAQS under the SIP shall be maintained either by -

(i) Achievement of emissions reductions earlier than otherwise required by certain facilities or operations covered by the bubble, or

(ii) Temporary use of a certified emissions reduction to assure reasonable further progress toward attainment of the NAAQS.

5. If, subsequent to the approval of a bubble, the Commission promulgates new regulations or amends existing regulations applicable to a source for which the bubble has been approved, the source shall be required to meet the new or amended regulations, irrespective of the bubble, by either further reducing emissions or using certified emissions reductions as offsets.

H. OFFSET TRANSACTIONS

1. The owner or operator of a source at which an emissions reduction has occurred, and the owner or operator of another source who wishes to use the emissions reduction as an offset, may apply for approval of an offset transaction. In such transactions certified emissions reductions may be applied to avoid causing a violation of an increment in an attainment area, or to meet the requirements of section IV.D.2.a(iii). A certified emissions reduction may not be used as an offset for the purpose of complying with an existing applicable emissions control regulation.

2. The Division shall determine whether to approve an offset transaction in the following cases:

a. Where the source using the emissions reduction would be allowed to increase emissions by less than 100 tons per year.

b. Where the transaction involves volatile organic compounds or oxides of nitrogen emissions.

c. Where the transaction involves sulfur dioxide, total suspended particulates or carbon monoxide emissions, and all sources involved in the transaction are within 250 meters of one another.

3. Any proposed offset transaction, other than those referred to in section V.H.2. shall be treated as a request to the Commission for a SIP revision.

4. Where an offset transaction has been approved the amount of allowable emissions in the permit of the source using the certified emissions reduction shall be increased by the amount of the certified emissions reduction.

I. NETTING TRANSACTIONS

1. Prior to installing any new facility or modifying an existing facility, the owner or operator of a source may apply to the Division for an exemption from the requirements of sections IV.D.3.a.(ii), (iii), and (vi) and XIV.B. through use of an emissions reduction at another facility within the source.

2. The Division shall grant such an exemption if the emissions reduction meets the criteria in subsection E. for certification, and the difference between the amount of the certified emissions reduction, and the amount of new pollutants to be emitted from the new or modified facility, does not constitute a significant increase of pollutants.

3. An increase of pollutants shall be considered significant if it equals or exceeds the amounts specified in section IV.D.2.b.(ii).

VI. FEES

A. General

1. Every person required to obtain an Emission Permit or file an Air Pollutant Emission Notice shall pay fees as set forth in the following paragraphs. Such fees shall be charged to recover actual costs incurred by the Division in processing permit applications and issuing permits, to include the reasonable costs of such processing or administration, and of enforcement of the permit provisions. Such costs shall include the cost of predictive model utilization when the use of such models is deemed necessary by the Division for proper evaluation of the permit application. The Division shall maintain a written record of the staff time and other costs incurred in the processing of a permit application. Such fees shall apply without regard to whether a permit is issued or denied.

2. All fees assessed must be received within thirty (30) days of the date of receipt of the written request therefor. Such requests shall be sent by certified mail. All fees collected under this regulation shall be made payable to the Colorado Department of Health. The Emission Permit shall not be issued until all such assessed fees have been paid.

B. Air Pollutant Emission Notice Fees

A non-refundable filing fee of $40.00 shall accompany each Air Pollutant Emission Notice (APEN) filed. Additionally, a fee of $40.00 shall be charged for the filing of each revised APEN required by Section II.B. of this Regulation No. 3, except that the owner or operator of a source required to file multiple revised APENs for a single facility under Sections II.B.1.a. or b. shall not be charged more than $800.00 in revised APEN fees during one reporting period for such facility.

C. Emission Permit Fees

1. Applicants for an Emission Permit shall be assessed total fees which shall be partially determined at the time that the Division makes its decision whether to issue preliminary approval of the Emission Permit and partially at the time the Division makes its decision whether to issue final approval, but in no event shall a fee exceed twenty-five thousand dollars for any and all permits required for an entire contiguous plant site.

2. The partial fee collected at the time the Division makes its decision whether to issue preliminary approval of the permit shall include direct costs associated with the preliminary engineering evaluation, modeling, and analysis of impact on ambient air quality, notice and publication requirements, and such other direct and indirect costs as are required for the aforementioned activities incurred by the Division up to the time of the decision of whether to issue preliminary approval.

3. The final fee collected at the time the Division makes its decision of whether to issue final approval shall include the balance of the total of all direct and indirect costs associated with enforcement of any terms and conditions of the emission permit, the supervision of compliance testing, notice and publication requirements, and such other costs as are required for the processing, issuance, and administration of the permit.

VII. CONFIDENTIAL INFORMATION OR DATA CONTAINED IN APEN'S OR EMISSION PERMIT APPLICATION

A. Upon written request by any person filing an APEN or an emission permit application, any information or data furnished to the Division in an APEN or Permit Application and determined by the Division to relate to confidential finances or to secret processes, methods of manufacture, or production, shall not be publicly disclosed and shall be kept confidential by all members, officers, and employees of the Board, the Commission, and the Division.

B. If the Division at anytime determines that information or data requested to be kept confidential is not entitled to confidential treatment, it shall provide fifteen (15) days written notice of its decision to the owner or operator requesting such confidential treatment prior to making such information or data public. Information concerning the nature and amounts of emissions into the atmosphere shall not be entitled to confidential treatment.

C. A request for confidential treatment of information or data submitted to the Division shall be deemed a limited waiver by the applicant of the time constraints contained in subsection IV.F. of this regulation. Therefore, any delay in the processing of a

permit application resulting from the Division's being required to give notice under subsection VII.B. hereof shall not be considered in determining whether a permit shall be deemed to have been granted or denied pursuant to subsection IV.F. of this regulation.

VIII. AREA CLASSIFICATIONS

A. Those portions of the following areas in Colorado which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:

1. National Parks

a. Rocky Mountain
b. Mesa Verde

2. National Wilderness Areas

a. Black Canyon of the Gunnison
b. Eagle's Nest
c. Flattops
d. Great Sand Dunes
e. La Garita
f. Maroon Bells - Snowmass
g. Mount Zirkel
h. Rawah
i. Weminuche
j. West Elk

B. All other areas of Colorado, unless otherwise specified by Act of Congress or the Colorado legislature, or the Commission pursuant to Subsection IX. are designated Class II; provided, however that in the following areas as they existed on August 7, 1977 (maps available from the Division), the increase allowed in sulfur dioxide concentrations over the baseline concentration shall be the same as the increase established by section 163(b) of the Federal Act for Class I areas, except that such allowable increases may not be allowed if a Federal Land Manager should make an adverse impact determination under Section XIV.C. with which the Division concurs and except that such allowable increases may be exceeded by compliance with the provisions of Sections XIV.D., XIV.E., or XIV.F.:

1. National Monuments

a. Florissant Fossil Beds
b. Colorado
c. Dinosaur
d. Black Canyon of the Gunnison (those portions not included as National Wilderness Areas in Section VIII.A.2.)
e. Great Sand Dunes (those portions not incuded as National Wilderness Areas in Section VIII.A.2.)

2. Forest Service Primitive Areas

a. Uncompahgre Mountain
b. Wilson Mountain

3. Lands administered by the Federal Bureau of Land Management in the Gunnison Gorge Recreation Area as of October 27, 1977.

All areas designated Class II under this subsection may be redesignated as provided in Section IX of this Regulation No. 3.

C. The following areas may be redesignated only as Class I or II.

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

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

IX. REDESIGNATION

A. Except as provided otherwise in this Section or Section VIII of this Regulation No. 3, the Commission may redesignate any area in Colorado as Class I, Class II or Class III as herein provided. The Commission will provide notice to the General Purpose Unit of local government in an area where the maximum allowable increase is being approached.

B. The Commission shall review and consider a request for redesignation by any person.

C. The Commission shall not set a hearing date on a proposed redesignation until the following have been completed:

1. A complete description of the area proposed for redesignation;

2. A detailed statement of the circumstances which support the proposed redesignation;

3. A prediction of the costs and benefits for the affected population from the proposed redesignation;

4. A technical analysis of expected impacts on ambient air quality in adjacent or nearby areas;

5. Comments, or evidence of an opportunity for submission of comments, by all appropriate regional planning agencies and councils of government (COG) organizations, affected municipalities and other affected political subdivisions; and

6. An analysis of the relationship of the proposed redesignation with applicable county or regional development plans, including but not limited to, comprehensive areawide plans and "208" water quality plan.

D. The Commission shall provide reasonable notice, including notice to other States, Indian Governing Bodies and Federal Land Managers whose lands may be affected by a proposed redesignation, of any proposed redesignation, and conduct public hearings on such proposed redesignation in or near areas within Colorado which may be affected by such proposed redesignation, including at least one public hearing within or as near as is practicable to the area to be redesignated. At least thirty days prior to any such public hearings, the Commission shall make available for public inspection a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation. The notice announcing any public hearings shall contain appropriate notificiation of the availability of such discussion.

E. Prior to the issuance of notice respecting the proposed redesignation of an area that includes any federal lands, the Commission shall provide written notice to the appropriate Federal Land Manager and afford adequate opportunity (not in excess of 60 days) to confer with the Commission respecting the notice of proposed redesignation and to submit written comments and recommendations with respect to such notice of proposed redesignation. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the Commission shall publish a list of any inconsistency between such redesignation and such comments and recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager).

F. All redesignations, except any established by an Indian Governing Body, shall be specifically approved (1) by the Governor, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature, if it is not in session, and (2) by resolutions or ordinances enacted by the general purpose units of local government representing a majority of the residents of the area to be redesignated.

G. No area may be redesignated if such redesignation would cause or contribute to concentrations of any air pollutant in any other area which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of such area.

H. Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian Governing Body.

I. Any redesignation shall constitute a revision to the Colorado State Implementation Plan and shall be submitted for approval to the Administrator of the United States Environmental Protection Agency.

J. Any redesignation or denial of a proper request for redesignation made pursuant to this Section IX. shall be subject to judicial review in accord with C.R.S. 1973, Section 25-7-120.

X. AIR QUALITY LIMITATIONS

A. Ambient Air Increments

1. The maximum allowable increases over the baseline concentration for sulfur dioxide or particulate matter, except as provided in Section VIII.B. of this Regulation No. 3, are:

a. For any Class I area: Micrograms per cubic meter

Particulate matter	(ug/m^3)
Annual geometric mean.	5
Twenty-four hour maximum.	10

Sulfur dioxide	(ug/m^3)
Annual arithmetic mean	2
Twenty-four hour maximum	5
Three-hour maximum	25

b. For any Class II area:

Particulate matter	(ug/m^3)
Annual geometric mean.	19
Twenty-four hour maximum	37

Sulfur dioxide	(ug/m^3)
Annual arithmetic mean	20
Twenty-four hour maximum	91
Three-hour maximum	512

c. For any Class III area:

Particulate matter	(ug/m^3)
Annual geometric mean.	37
Twenty-four hour maximum	75

Sulfur dioxide (ug/m^3)

Annual arithmetic mean	40
Twenty-four hour maximum	.182
Three-hour maximum	.700

2. The maximum allowable increases over the baseline concentration for any other air pollutants shall be the same as those increases established pursuant to Section 166(a) of the Federal Act.

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

4. a. The Division shall, on a periodic basis, review the adequacy of this Regulation No. 3 for preventing significant deterioration of air quality. Within 30 days after any information becomes available and there is cause to believe that an applicable increment is being violated, the Division shall present the cause for such belief to the Commission.

   b. If the Commission concurs that there is cause to believe that an increment is being violated, it or the Board, as decided by the Commission, shall hold a hearing to determine whether an increment violation exists. The hearing shall be held pursuant to the procedures of CRS 1973, 25-7-119. Notice should be given by first class mail to permitted sources which can be reasonably identified as emitting the pollutant in violation and affecting the area of violation.

   c. Should the Commission or the Board, if applicable, determine that an increment violation exists, the Division shall review all sources affecting the area of increment violation and ensure that all such sources are in compliance with all applicable permit conditions and state and local regulations. Within 30 days after completing such a review, the Division shall recommend revisions, if necessary, to the Commission to correct the violation. Upon receipt of recommended revisions from the Division, the Commission shall as soon as practicable act to revise this regulation as it deems necessary.

B. Ambient Air Limits. No concentrations of a pollutant shall exceed a national ambient air quality standard or a state ambient air standard where no NAAQS has been established.

XI. EXCLUSIONS FROM INCREMENT CONSUMPTION

A. The following concentrations are excluded in determining compliance with a maximum allowable increase:

1. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by an order in effect under Sections 2(a) and (b) of the federal "Energy Supply and Environmental Coordination Act of 1974" (or any superseding legislation) over the emissions from such sources before the effective date of such an order, but not more than five years after the effective date of such an order.

2. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the federal "Power Act" over the emissions from such sources before the effective date of such plan, but not more than five years after the effective date of the plan.

3. Concentrations of particulate matter attributable to an increase in emissions from a temporary source, modification, or activity.

4. Concentrations of fugitive dust. The owner or operator of a source must demonstrate with clear and convincing evidence what concentrations are fugitive dust.

5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources that are affected by revisions of the Colorado State Implementation Plan which are approved by the Administrator of the United States Environmental Protection Agency and which provide that:

   a. the time period of such temporary increase in emissions is not renewable and may not exceed two years in duration, unless a longer time is approved by the Division and EPA;

   b. such temporary increase in emissions shall not impact a Class I area or an area where an applicable increment is known to be violated or cause or contribute to the violation of a national ambient air quality standard; and

   c. emission limitations shall be in effect at the end of the time period specified in the plan revision which will ensure that the emissions levels from stationary sources affected by the plan revision will not exceed those levels occurring from such sources before the plan revision was approved by EPA.

XII. TECHNICAL MODELING AND MONITORING REQUIREMENTS

A. Air Quality Models

1. All estimates of ambient concentrations required under this Regulation No. 3 shall be based on the applicable air quality models, data bases, and other requirements generally approved by EPA and specifically approved by the Division.

   If a non-EPA approved model, such as a wind tunnel study, is proposed, the nature and requirements of such a model should be outlined to the Division at a pre-application meeting. The application will be deemed incomplete until there has been an opportunity for a public hearing on the proposed model and written approval of the United States EPA has been received.

B. Monitoring

1. All monitoring must be performed in accordance with EPA accepted procedures as approved by the Division.

2. An owner or operator may submit a monitoring program for a proposed source or modification to the Division for review. Within 60 days after such submittal, the Division shall:

   a. approve the monitoring program; or

   b. specify the changes necessary for approval; otherwise, the monitoring program shall be deemed approved.

C. Stack Heights. This regulation sets limits for the maximum stack height credit to be used in ambient air quality modeling for the purpose of setting an emission limitation and calculating the air quality impact of a source. It does not limit the actual physical stack height for any source. The following shall not be considered in determining whether an emission limitation is met:

1. Stack height in excess of good engineering practice (GEP); or

2. Any other dispersion technique; except that the provisions of this Section XII.C. shall not apply to stack heights in existence or dispersion techniques implemented before December 31, 1970. Sources which were constructed, reconstructed, or for which major modifications were carried out after December 31, 1970, and which are emitting pollutants from such stacks, or using such dispersion techniques, shall be subject to the provisions of this Section.

D. Definitions. As used in this Section XII.C.:

STACK IN EXISTENCE means that the owner or operator had

1. begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

2. entered into binding agreements or contractual obligations which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

DISPERSION TECHNIQUE means any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height, varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant, or by increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceeding sentence does not include:

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

2. The merging of exhaust gas streams where:

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

   b. After July 8, 1983, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "Dispersion Techniques" shall apply only to the emission limitation for the Pollutant affected by such change in operation; or

   c. Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the Emissions limitation or, in the event that no emission limitation was in existence prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly

motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

3. Smoke management in agricultural or silvicultural prescribed burning programs;

4. Episodic restrictions on residential woodburning and open burning; or

5. Techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

GOOD ENGINEERING PRACTICE (GEP) STACK HEIGHT means the greater of:

1. 65 meters; or

2. For stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable preconstruction permits or approvals required, $H_g=2.5H$, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; and

3. For all other stacks, $H_g=H+1.5L$ where:

   a. H_g=good engineering practice stack height measured from the ground level elevation at the base of the stack

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

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

4. The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, structures, or terrain obstacles.

NEARBY As applied to good engineering practice (GEP), is

1. For purposes of applying the formulae provided under 2. and 3. in the Definition of "Good Engineering Practice (GEP) Stack Height" means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (one-half mile), and

2. For conducting demonstrations under 4. in the definition of GEP, means not greater than 0.8 KM (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if such feature achieves a height 0.8 KM from the stack that is at least 40% of the GEP stack height determine by the formulae or 26 meters, whichever is greater.

EXCESSIVE CONCENTRATIONS: for the purpose of determining good engineering practice stack height in a fluid model or field study, means

1. For sources seeking credit for stack height exceeding that established by the formulae, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concnetration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Division, an alternative emission rate shall be established in consultation with the source owner or operator;

2. For sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established by the formulae, either

   a. A maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in 1. above, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or

   b. The actual presence of a local nuisance caused by the existing stack, as determined by the Division; and

3. For sources seeking credit after January 12, 1979 for a stack height determined using the formulae, where the Division requires the use of a field study or fluid model to verify GEP stack height; for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers; and for sources seeking credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the formulae: a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes or eddy effects.

XIII. INNOVATIVE CONTROL TECHNOLOGY

A. An owner or operator of a proposed major stationary source or major modification otherwise subject to the requirements of Section IV.D.3. of this Regulation No. 3 may request the Division to grant a waiver from any or all such requirements and to approve a system of innovative control technology, in order to encourage the use of such technology.

B. The Division or the board as the case may be may grant a waiver from any or all requirements of Section IV.D.3. of this regulation necessary for the employment of innovative control technology and determine that the source or modification may employ such system if:

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

2. The owner or operator agrees to achieve a level of continuous emissions reduction greater than or equivalent to that which would have been required under Section IV.D.3.a.(i) by a date specified by the Division. Such date shall not be later than 4 years from the time of startup or 7 years from permit issuance;

3. The source or modification would meet the requirements of Sections IV.D.3.a.(i) and (ii) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the Division;

4. The source or modification would not, before the date specified by the Division under paragraph 2, above;

a. Cause or contribute to any violation of an applicable national ambient air quality standard; or

b. Impact any area where an applicable increment is known to be violated; or

c. Impact any Class I area.

5. All other applicable requirements including those for public participation have been met.

C. The Division shall withdraw any approval to employ a system of innovative control technology made under this section, if:

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

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

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

D. If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection C. of this section, the Division may allow the source or modification up to an additional 3 years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

XIV. FEDERAL CLASS I AREAS

A. Within twenty (20) days of receipt of a permit application for a new major stationary source or major modification that may affect visibility or air quality related values in any Federal Class I area, the Division shall transmit a copy of the application to all affected Federal Land Managers and consult with them as to its completeness in its analysis and monitoring (if required) of air quality related values. If the Division receives advance notification of a permit application of a source that may affect visibility or air quality related values, it will notify all affected Federal Land Managers within thirty (30) days of such notification. The Division will consider any analysis performed by a Federal Land Manager that there will be an adverse impact on visibility or air quality related values if such analysis is received within thirty (30) days after the Federal Land Manager receives a copy of the complete application. If the Division disagrees with the Federal Land Manager, any notices for public comment or of a public hearing on the application will explain the disagreement or state where the explanation can be obtained.

B. In addition to the general impact analysis required by Section IV.D.3.(a)(vi), any source which will have or is likely to have an impact on any designated Class I area may be required to conduct monitoring to establish the condition of and impact on air quality related values (AQRVs) in such Class I area(s) both prior to completing an application for a permit to construct and during the construction and operation of such source.

1. No monitoring shall be required if it has already been conducted and completed by any person or if it is being conducted by any federal, state, or local agency. Applicants or permittees of sources affecting the same Class 1 area(s) and required to monitor identical sensitive receptors or AQRVs on a compatible schedule shall conduct joint monitoring.

2. Pre-application monitoring may include the monitoring of not more than three AQRVs or sensitive receptors of AQRV's specified by the Division after consultation with the Federal Land Manager. The AQRVs or sensitive receptor(s) selected must be important to the affected Class 1 area, and there must be cause to believe that monitoring of the AQRVs or sensitive receptors will provide a basis for evaluating effects to the related AQRVs.

3. Monitoring during construction and operation may only be required for the sensitive receptors specified for pre-application monitoring, unless new information becomes available which demonstrates a significant economic or technological advantage of monitoring a different sensitive receptor, and it is acceptable to the source owner or operator.

4. Monitoring of AQRVs or sensitive receptors of AQRVs may only be required if:

   a. Monitoring methods are reasonably available and research and development of monitoring methods are unnecessary;

   b. The major effect on the AQRV or sensitive receptor would reasonably be predicted to be a result of the applicant's individual emissions or of the applicant's emissions in combination with any person's emissions with whom the applicant may be required to conduct joint monitoring; and

   c. It is economically reasonable for the source to conduct such monitoring. Evidence of the economic reasonableness of pre-construction monitoring is that the cost of monitoring the AQRVs or sensitive receptors is not more than one-fourth of the applicant's costs of performing the Additional Impact Analysis, including the impact analysis on AQRVs (in the absence of monitoring data) and of preconstruction ambient air monitoring required persuant to this Regulation No. 3. Evidence of the economic reasonableness of monitoring the AQRVs or sensitive receptors during construction and operation is that the cost of such monitoring is not more than one-fourth of the cost of post construction monitoring of ambient concentrations required persuant to this Regulation No. 3. If pre- or

post-construction ambient air monitoring is not required of an applicant, the cost of such monitoring is to be estimated assuming it were required, and used in determining economic reasonableness as stated above.

C. Sources Impacting Federal Class I Area - Additional Requirements. Federal Land Managers may present to the Division, after its preliminary analysis required under Section IV.B. of this Regulation No. 3, a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Division concurs with such demonstration, or in the event the Federal Land Manager fails to perform an adverse impact analysis and the Division determines that there is an adverse impact on visibility, or the Division determines that a demonstration of no adverse impact is in error, the Division shall not issue the permit.

D. Class I Variances. The owner or operator of a proposed major stationary source or major modification may demonstrate to the satisfaction of the Federal Land Manager that the emissions from such source or modification would not have an adverse impact on the air quality-related values (including visibility) of Class I lands under the Federal Land Manager's jurisdiction, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies to the Division, the Division or the Board, if applicable, may, provided that applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide and particulate matter would not exceed the potential to emit or the net emissions increase of the source or modification and would not exceed the following maximum allowable increases over the baseline concentration for such pollutants. A decision by the Board to issue a permit or not to issue a permit after review of such certification shall be reviewable under the procedures of Section IV.C.10.

Particulate matter	Maximum allowable increase (micrograms per cubic meter)
Annual geometric mean	19
Twenty-four hour maximum	37

Sulfur dioxide	Maximum allowable increase (micrograms per cubic meter)
Annual arithmetic mean	20
Twenty-four hour maximum	91
Three-hour maximum	325

E. Sulfur Dioxide Variance by Governor

1. The owner or operator of a proposed major stationary source or major modification which cannot be approved under subsection D. of this section may demonstrate to the Governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any Class I area and, in the case of the Federal mandatory Class I areas, that a variance under this section would not have an adverse affect on the air quality-related values of the area (including visibility).

2. The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may grant, after notice and an opportunity for a public hearing, a variance from such maximum allowable increase.

3. If such variance is granted, the Division may issue a permit to such source or modification in accordance with subsection G. of this section, provided that the applicable requirements of Regulation No. 3 are otherwise met.

F. Variance by the Governor with the President's Concurrence

1. The recommendations of the Governor and the Federal Land Manager shall be transferred to the President in any case where the Governor recommends a variance in which the Federal Land Manager does not concur.

2. If the President approves the variance, the Division may issue a permit in accordance with subsection G. of this section, provided that the applicable requirements of Regulation No. 3 are otherwise met.

G. Emission Limitations for Presidential and Gubernatorial Variance. In the case of a permit to be issued under subsection E. and F. of this section, the source or modification shall comply with emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase
(Micrograms Per Cubic Meter)

Period of Exposure	Terrain Areas	
	Low	High
Twenty-four hour maximum	36	62
Three-hour maximum	130	221

WRITTEN STATEMENTS OF THE BASIS AND PURPOSE OF THIS REGULATION AND REVISIONS HAVE BEEN PREPARED AND ADOPTED BY THE COMMISSION. THESE WRITTEN STATEMENTS HAVE BEEN INCORPORATED IN THIS REGULATION BY REFERENCE AND IN ACCORD WITH C.R.S. 1973, 24-4-103 AS AMENDED.

RATIONALE AND JUSTIFICATION
FOR THE REPEAL AND REPROMULGATION
OF REGULATION NO. 3
AND
COMMON PROVISIONS REGULATION AS RELATED TO
REGULATION NO. 3

On December 14, 1978, the Air Quality Control Commission revised Regulation No. 3 (concerning requirements for filing air pollution emission notices, obtaining emission permits, and payment of fees with respect to both) for the primary purpose of bringing Colorado's air pollutant emission permit program into conformity with the requirements of the Federal Clean Air Act Amendments of 1977 to the extent authorized by the then effective State statutory authority: "The Air Pollution Control Act of 1970, "C.R.S. 1973, 25-7-101 et seq. The regulation as revised in 1978 and which became effective January 30, 1979, was submitted to the U.S. Environmental Protection Agency as a revision to the state Implementation Plan ("SIP") pursuant to subsection 129(c) of the Federal Clean Air Act Amendments of 1977.

Since that submittal, the Colorado General Assembly has repealed and reenacted the State's basic air pollution control statute: Article 7 of Title 25, Colorado Revised Statutes, 1973. The new article, known as the "Colorado Air Quality Control Act" (designated House Bill 1109 in the 1979 legislative session), became effective June 20, 1979, and largely brought the State statute into conformity with the Federal legislation, mandating the Commission to develop a comprehensive air pollution control program meeting the requirements of the Federal Clean Air Act.

Revisions also respond to the requirements set forth in the October 5, 1979 Federal Register notice which conditionally approved portions of the Colorado SIP and set forth certain requirements for securing their unconditional approval. E.G., see section IV.D.2.a(iv) of revised Regulation No. 3 which incorporates the requirements of section 172(b)(11)(A) of the Clean Air Act. 44 Fed. Reg. 57401, 57408 (1979).

The Commission has made an effort to formulate a permit program meeting the requirement of and paralleling of the provisions EPA policies and rules to the extent authorized by House Bill 1109 and to the extent deemed appropriate by the Commission for Colorado's particular circumstances. This has been done in order to meet certain specific requirements expressly set forth in the Federal Clean Air Act, to meet certain specific requirements EPA has determined are required for compliance with the Federal Act, and to avoid subjecting sources of air pollution in Colorado to differing State and Federal requirements. The Commission considered the assurance of reasonable further progress toward attainment of National Ambient Air Quality Standards as the primary underlying criterion in developing permit requirements for sources located in or near non-attainment areas.

Consideration has also been given to the opinion of the United States Court of appeals for the District of Columbia in the case of Alabama Power Company v. Costle _____ F.2d____(D.C. Cir., 1979).

APENs

In order to reduce the administrative burden on both the Air Pollution Control Division ("the Division") and owners and operators of air pollution sources, the filing of revised air pollution emission notices for the purpose of reporting significant changes in emissions will be required only on an annual basis, rather than whenever a significant change in emissions occurs. In making this revision, the Commission relied on the representations of the Division that annual reporting would be sufficient for purposes of keeping the emissions inventory current.

Street Sanding

With the exception of street sanding (and indirect sources), the exemptions provided in the revised regulation from the APEN-filing and emission permit requiremtns are for minor or insignificant sources of emissions.

Although not finding that prticulate emissions resulting from the application and reintrainment of "sand" applied to snow or ice covered roadways as a traffic safety measure are insignificant, the Commission has exempted sanding from the APEN-filing and permit requirements out of administrative necessity.

Little benefit can be obtained from the filing of APENs in light of the fact that the amount of emissions cannot be predicted with any reasonable accuracy due to varying factors such as weather. APENs would therefore serve little purpose as notices of expected emissions.

It is the judgment of the Commission that protection of persons and property by sanding snow and ice covered roadways is an overriding consideration and that the costs of not taking such safety measures would far outweigh any air quality benefits resulting from requiring permits for sanding. Sanding should not therefore be prohibited -- even without a permit. The only reason for imposing a permit requirement would be to facilitate enforcement of control measures to limit emissions which the Commission believs may be accomplished without a permit requirement through emission control regulations and provisions in local elements of the State Implementation Plan.

Major Source, Major Modifications, and the "Bubble" Concept

The Commission has retained requirements that new "major sources" locating in non-attainment areas and "major modifications" to existing sources in non-attainment areas meet special requirements (Offsets, LAER, etc.) designed to allow for continued development in such areas without interferring with reasonable further progress toward attainment of National Ambient Air Quality Standards. The criteria for determining when a new source or modification to an existing source is "major" however, have been extensively revised.

Prior to the U.S. Court of Appeals Decision in Alabama Power Company v. Costle, EPA had defined "potential to emit" -- a key phrase in the definition of "major emitting facility" -- in terms of uncontrolled emissions. The court however, interpreted the phrase "potential to emit" as used in the definition of "major emitting facility" in section 169(1) of the Clean Air Act as taking "into account the anticipated functioning of the air pollution control

equipment designed into the facility," thereby drastically reducing the number of sources qualifying as major. In response to this decision, on September 5, 1979, EPA proposed amendments to its regulations concerning requirements for SIPs including those pertaining to prevention of significant deterioration of air quality ("PSD") and new source review in non-attainment areas, as well as EPA's Emission Offset Interpretative Ruling. 44 Fed. Reg. 51924 (1979). The Commission in reviewing Regulation No. 3 and the Common Provisions Regulation has incorporated many of the amendments adopted by EPA in its regulations including classifications of sources as major or minor bsed on controlled emissions.

The court in Alabama Power Company struck down the EPA regulation definition of "major modification" which definition required the imposition of the special non-attainment area requirements (Offsets, LAER, etc.) on sources when modifications resulted in an increase in emissions of a criteria pollutants of 100 tons per year or more (for certain listed categories of sources; 250 tons or more for sources not listed). The court held that the special nonattainment requirements applied to all modifications of major emitting facilities except those resulting in only "de minimus" increases in emissions. The court stated, however, that it would be permissible to look at the net increase in potential emissions from a major source in determining whether Offsets, LAER, etc., will be required.

In its proposed rules, EPA has adopted the "net increase" or "bubble" approach which generally allows a major source undergoing modification to avoid permit review as a major modification by allowing emission reductions elsewhere at the source to offset any increases resulting from the proposed modification. The Commission has adopted the "bubble" concept and many of EPA's specific regulatory provisions with respect to the concept as applied to modifications.

The court in Alabama Power Company also held that fugitive emissions could be included in determining whether a source is "major" only to the extent such emissions were expressly determined to be included by rule of the EPA administrator. In response, EPA has proposed a regulatory definition of "Potential to emit" by which fugitive emissions from twenty-seven (27) listed sources would be included in determinations of which new sources and modifications are major. 44 Fed. Reg. 51956, 51958 (1979). In recognition of the fact that such emissions would be included in determinations of whether a source or modification was major if they were emitted through a stack (as opposed to being "fugitive"), recognizing that generally emissions from the twenty-seven (27) listed source categories contribute to hazards to public health and welfare, and to be consistent with the federal scheme, the Commission has also decided to consider fugitive emissions from the twenty-seven source categories in major source/major modification determinations to the extent they are quantifiable. An owner or operator may avoid the inclusion of fugitive emissions of partiuculate matter by demonstrating that such emissions are of a size and substance which do not adversely affect public healthe or welfare.

Banking

C.R.S. 1973, 25-7-304 requires the attainment program to provide that emission reduction offsets exceeding those required for the granting of a permit "may be preserved for sale or use in the future." Section V of Regulation No. 3 establishes an administrative framework and the basic requirements of such a procedure consistent with the "banking" provisions established by EPA in its

Emission Offset interpretative Ruling, 44 Fed. Reg. 3274, 3280, 3285 (January 16, 1979) (to be codified as Appendix S to 40 C.R.S. part 51).

Extended "Debugging" Period.

Pursuant to C.R.S. 1973, 25-7-114(4)(j), the Division may grant the owner or operator of a new source up to six months after commencement of operation in which to demonstrate compliance with all terms and conditions of its emission permit. The Commission determined, however, that under certain circumstances it would be appropriate to allow a source employing innovative control technology additional time in which to bring the operation of the source into full compliance. Therefore, pursuant to its authority under C.R.S. 1973, 25-7-109(5), the Commission has provided in paragraph IV. H.6. of Regulation No. 3 for such temporary relief from controls under specified limited circumstances. The provision is intended for very limited application.

PSD

Regulation No. 3 does not address the subject of special permits for major sources locating in attainment areas to insure prevention of significant deterioration of air quality. The Commission decided to wait until EPA's PSD regulations to establish a fully State-operated program. State emission permits are nonetheless still required for sources locating in attainment areas.

Common Provisions Regulation

In connection with the revision of Regulation No. 3, the Commission concurrently made limited, related revisions in its Common Provisions Regulation. Sections I.B. and I.C. of that regulation have been changed to reflect the renumbering of the sections in the State statute authorizing the Commission to promulgate regulations and to reflect the amended language in the declaration of legislative intent.

Section I.F. of the regulation was amended to add new abbreviations used in revised Regulation No. 3 and section I.G. (definitions) was amended to delete, revise, and add terms and their definitions to reflect changes in the terminology used in Regulation No. 3.

ADOPTED: June 5, 1980
COLORADO AIR QUALITY CONTROL COMMISSION

STATEMENT OF BASIS AND PURPOSE
CONCERNING MAY 13, 1982 AMENDMENT TO SECTION IV.C.
(PUBLIC COMMENT)
FOR SMALL SOURCES LOCATING IN NONATTAINMENT AREAS

The rationale for this proposed revision is based on the underlying purpose of public comment: to obtain public input on proposed sources that the Air Pollution Control Division (APCD) can use in considering whether a permit should be granted.

Under the previous regulation all sources locating in nonattainment areas were subject to the public comment requirement unless the APCD exercised its discretion under Section IV.C.3. (sources of less than 6 month's duration) to exempt them. APCD experience has shown that there are four categories of small sources that frequently locate in nonattainment areas, but which did not stimulate comment from the public. These categories are: (1) service stations; (2) restaurants; (3) land development (houses and commercial); and (4) other small sources (such as concrete batch plants). Basically, all the effort put into preparation of public comment packages for these sources can now be used more efficiently and the associated expense to industry saved.

The limit of 5 Tons Per Year (TPY) of controlled annual emissions is based on calculations that show most of the sources in these four categories emit less than 5 TPY of any one pollutant. Service stations, for example, generally emit 1 to 2 TPY. In many cases less than 1 TPY is emitted.

Under the revised regulation, sources less than 5 TPY can still be subject to public comment if the Division determines it appropriate based on criteria set forth in the regulation. The difference is that the APCD would have descretion to decide instead of being required to provide public notice. Controversial sources such as gravel pits, odor sources and landfill operations are subjected to public comment by the APCD regardless of the level of emissions. This practice will continue in effect.

Adopted: May 13, 1982
Colorado Air Quality Control Commission.

STATEMENT OF BASIS AND PURPOSE FOR THE
PREVENTION OF SIGNIFICANT DETERIORATION PROGRAM REGULATIONS

Adopted March 10, 1983

This Statement of Basis and Purpose for the Prevention of Significant Deterioration (PSD) Program Regulations complies with the State Administrative Procedure Act, CRS 1973, 24-4-103(4). The statutory authority for the PSD regulations are in the Air Quality Control Act at CRS 1973, 25-7-102, 25-7-105, 25-7-106, 25-7-108, 25-7-109, 25-7-114, 25-7-116, 25-7-201 et seq. The general purpose of these regulations is to prevent the significant deterioration of air quality in those sections of the state which have attained the national ambient air quality standards. The parties to this rulemaking include:

> Colorado Association of Commerce and Industry; Rocky Mountain Oil & Gas Association, Inc.; Chevron Shale Oil Company; Union Oil Company of California; Colorado Ute Electric Association, Inc.; The Colorado Mountain Club; COAL; Public Service Company of Colorado; City of Colorado Springs; CF&I Steel; Environmental Defense Fund, Inc.; United States Department of the Interior; and United States Department of Agriculture.

The Air Pollution Control Division acted as staff for and advised the Commission during the proceeding. See CRS 1973, 25-7-111(2)(g).

The PSD regulations adopted by the Commission are in many respects identical to the U.S. Environmental Protection Agency (EPA) PSD regulations. See 40 CFR 51.24 et seq.; 40 CFR 52.21 et seq. The primary reason for this is that the State Act requires that the State PSD program be in accordance with the federal Clean Air Act PSD provisions. See CRS 1973, 25-7-203. Thus, federal PSD requirements are generally a minimum for the State PSD Program. For these reasons, to the extent that the federal PSD rules are identical or substantially identical to the state regulations, the Commission incorporates herein the EPA statements of basis and purpose for the federal PSD rules at 43 Fed. Reg. 26380 et seq. (June 19, 1978) and 45 Fed. Reg. 52676 et seq. (August 7, 1980).

The Commission has additional authorities to prevent significant deterioration of air quality. In several important areas the Commission has tailored these regulations to meet the concerns of Colorado citizens. These areas include the requirement for an impact analysis on water to determine acid deposition effects, the authority to make independent determinations on adverse impact to visibility in Class I areas if the federal land manager fails to fulfill his responsibility to do so, the requirement to establish baselines for, and to monitor air quality related values in, Class I areas to determine the effects of emissions on such values, and the application of Class I sulfur dioxide increments to several Class II primitive areas and national monuments.

The proposed PSD regulations included several provisions reflecting the terms of a settlement agreement in the matter of Chemical Manufacturer's Association, et al. v. EPA in which EPA has agreed to propose amendments to its PSD rules. The Commission has rejected the adoption of such provisions for several reasons. They are arguably less stringent than current EPA rules in that they would appear to permit more air pollution. Because they

may be less stringent, their adoption appeared likely on the basis of EPA testimony to impede the approval of the state PSD program by EPA at this time. Finally, EPA's schedule for consideration of such provisions is unknown. Subsequent to EPA action on the provisions of the settlement agreement, the Commission will reconsider those provisions.

The PSD regulations will generally not become applicable to major sources or major modifications in Colorado until EPA has approved them. See CRS 1973, 25-7-210. However, the regulations pertaining to attainment area designations and the enforcement of Class I sulfur dioxide increments in those areas listed in CRS 1973, 25-7-209 will be applicable upon the effective date of these regulations. These regulations will be effective twenty (20) days from publication in the Colorado Register.

DEFINITION OF "ACTUAL EMISSIONS"

The definition adopted is essentially identical to the EPA definition.

One party proposed that reference should be made to consideration of control efficiency. The Commission did not adopt this proposal because the definition inferentially considers control equipment efficiency and the reference requested would create confusion, when actual test data were available, as to whether a separate "efficiency" factor was to be applied.

Another party, in commenting on the definition of "baseline concentration," expressed concern that the determination of "actual emissions" could take place, for example, during a low-demand period for a power plant. Such determination would result in an emission rate considerably less than the full-capacity allowable emission rate, resulting in a low baseline concentration. The power plant, operating the next year at full capacity, could consume all or most of the available increment, prohibiting growth in the area. The Commission recognizes that, for certain sources such as power plants (i.e., fossil fuel-fired steam generators), the source must respond to constantly changing demands with significant changes in emissions from year to year. Therefore, for fossil fuel-fired steam generators, "allowable emissions" should generally be considered "representative of normal unit operation" rather than actual emissions in determinations of "actual emissions" for determining baseline concentration and increment consumption, unless it is clearly demonstrated that a lower level of emissions will never be exceeded.

DEFINITION OF "BASELINE AREA" AND "BASELINE DATE"

"Baseline area" is not specifically defined in the State Act but is simply referred to as "an area subject to this article" in the definition of baseline concentration. CRS 1973, 25-7-202. The Federal Clean Air Act definition of "baseline concentration," Section 169(4), is identical to the state's, and EPA has interpreted" an area subject to this article" to mean the attainment and unclassifiable areas designated pursuant to Section 107(d)(1)(D) or (E) of the Federal Clean Air Act. Such an interpretation is also reasonable under the Colorado Air Quality Control Act which states that the Commission shall adopt measures "to prevent significant deterioration of

ambient air quality in each region, or portion thereof, of the state identified pursuant to Section 107(d)(1)(D) or (E) of the Federal Act." The result of EPA's definition is that the entire state is the baseline area for SO_2, and air quality control regions for particulate matter.

Several parties proposed alternative approaches to the definition of baseline area. These approaches ranged from a modelled 1 ug/m^3 impact area (based on 7.5 minute quadrangles, the county-township-range-section system, or a metric grid) to the entire state.

The Commission adopted the EPA definition for the following reasons:

(1) The EPA approach has been in effect for several years and has proven workable. EPA has well-developed procedures for performing source impact analyses in large baseline areas which the state can use. Changing the definition of baseline area would result in use of an approach that has not been proven and that would cause a discontinuity for the regulated industries when the PSD program is delegated to the state.

(2) The use of areas larger than the source impact area means that baseline concentrations will be determined at an earlier date, and increments will be consumed from an earlier date, thus minimizing air quality deterioration. This fulfills the primary purpose of the State Act. See CRS 1973, 25-7-102.

Certain parties were concerned that baseline areas larger than the impact area might unnecessarily inhibit economic growth in the unaffected portion of the baseline area, but should that occur, and there are no specific examples in the record of where that would occur, the Commission could consider subdividing baseline areas to allow for a new baseline date and concentration.

Testimony from Pitkin County and members of the general public indicated concern that with small baseline areas, minor source emission increases would continue to raise the background ambient air concentrations, especially for particulate matter, before a major source would locate in an area to begin the counting of increment consumption. The baseline areas selected by the Commission for particulate matter represent a balance between a recognition that particulate matter emissions are often a more localized problem than are gaseous emissions (hence the use of AQCRs for particulate matter instead of the entire state, as is the approach for SO_2) and the need to begin counting increment consumption expeditiously (hence, the use of AQCRs for particulate matter rather than the smaller impact area). Only two AQCRs in Colorado have been triggered during the six years PSD has been in effect. Since triggered baseline areas can in the future be subdivided into triggered and untriggered areas, the Commission considers the use of baseline areas the size of AQCRs sufficiently flexible for purposes of reasonable application, economic growth, and prevention of air quality deterioration.

(3) Use of a baseline area equivalent to the 1 ug/m^3 impact area could result in a situation where impacts on a Class I area individually were each less than 1 ug/m^3, with the result that the Class I area would not be a part of a baseline area. Yet the cumulative impact of these

sources could be greater than the 1 ug/m^3 increment for particulate matter for Class I areas, so that deterioration of air quality greater than that allowed by the regulation could legally occur.

(4) The use of the entire state as an SO_2 baseline area provides maximum protection for all Class I areas in the state. This is of particular concern to the Commission, since the general flow of air from west to east and the long-range transport of gaseous pollutants can result in effects on nearly all of Colorado's Class I areas by SO_2 sources on the West Slope. The effects and extent of acid deposition, to which SO is a major contributor, was a topic of extensive testimony at the hearings; the definition of the entire state as a baseline area for SO_2 affords maximum protection of the environment while the problem of acid deposition receives additional study.

DEFINITION OF "BASELINE CONCENTRATION"

Two parties proposed changes to this definition, both suggesting the substitution of "allowable" for "actual" emissions in portions of the definition. The concern regarding power plant actual versus allowable emissions is discussed under "Actual Emissions," above.

The other concern arises from the possibility of a large difference between actual and allowable emissions in the calculation of increment consumption or in establishing baseline concentrations. This is discussed extensively in the EPA preamble to the August 7, 1980 PSD regulations (Division Exhibit B, pp. 74-76) concerning increment consumption. EPA's rationale is that actual emissions more reasonably represent actual air quality than allowable emissions and that because actual emissions are based on at least two years of operation, future emissions could be reasonably expected to remain at the same level. EPA therefore uses actual emissions to avoid "paper consumption" of increment (or modelled baseline concentrations which would exceed monitored levels) The Commission concurs with the EPA rationale and has adopted the EPA approach of using actual emissions to track increment consumption and determine baseline concentrations.

DEFINITION OF "COMPLETE"

The Environmental Defense Fund (EDF) proposed a list of specific elements of a PSD permit application, for aid in determining whether an application is "complete," which was generally incorporated in the final rule. The proposed list of items would add some certainty and clarification for the applicant and the Division of the specific items required to demonstrate completeness of an application. Regarding items (i) and (iii)-(iv), opposition to the list by several parties was primarily that it was redundant with other requirements of the rules. York, Nov. 10 Tr. at 18 et seq. and 60 et seq. Item (ii) was retained because, for many or most applications, such information would be necessary to verify the applicant's modelling.

DEFINITION OF "NET EMISSIONS INCREASE"

Several parties proposed crediting increases or decreases in emissions which occur up to five years after a modification becomes operational. The Commission did not adopt this recommendation because EPA specifically prohibits states from crediting decreases which would occur after the change occurs. 40 CFR 51.24(b)(3). In addition, it would prove difficult to exact an enforceable agreement for a source to close down or otherwise decrease emissions at some future date.

Several parties proposed in paragraph f(ii) to shift "enforceable" from time of construction to time of operation. This change would not be consistent with the state statutory requirements, which prohibit construction or operation of a non-permitted new source or modification. The suggested change would also needlessly complicate the correlation of permits to enforceable decreases in emissions.

In response to a party comment that 90 days to report a reduction in emissions is too short, the Commission agreed and has allowed such reports to be made within a year of the decrease unless an extension is granted. A longer time would make the reduction difficult to verify.

DEFINITION OF "SECONDARY EMISSIONS"

The final definition incorporates a recent amendment by EPA, 47 Fed. Reg. 27554 (June 25, 1982) and is consistent with CRS 1973, 25-7-202(6.5).

DEFINITION OF "ALLOWABLE EMISSIONS"

In several sections of EPA's PSD rules, including its definition of "allowable emissions," EPA grants credit for permit conditions only if they are "federally enforceable." In each of such sections, the Commission has deleted the qualification of "federally" and has in the Common Provisions Regulation defined "enforceable" so that it is consistent with EPA's definition of "federally enforceable."

DEFINTIION OF "SIGNIFICANT"

Several parties commented that the proposed definition, which defined both "significant" and "significantly" and included a listing of "significant concentrations," was confusing and unnecessary. The proposed definition also gave the Division the discretion to (1) determine that certain sources were not significant even if the source met the definition, and (2) to determine significance levels for non-listed pollutants. In addition, it limited the definition for sources affecting Class I areas to those sources producing a "significant" impact. There were several sections in the proposed regulations which used the "significant" definition of ambient concentrations to allow impacts to Class I areas not allowed under EPA rules. EPA and the National Park Service commented that these changes

resulted in a less stringent definition. The Commission agreed with these comments. The final definition is essentially identical to EPA's and uses only emission rates to define "significant," and the use of "significant" to qualify impacts to Class I areas in other sections of the rules has been deleted.

DEFINITION OF "MODIFICATION"

One party proposed that an existing exception for increases in SO_2 emissions caused by adding new emission control equipment (e.g., replacing scrubbers with fabric filters) be retained. The Commission acknowledges that this exemption was intended to avoid penalizing a source willing to improve particulate matter collection by converting from scrubbers to baghouses or electrostatic precipitators. Since scrubbers collect gaseous pollutants, but baghouses and precipitators do not, the amount of SO_2 emitted would increase, hence the exemption. Since there are a number of nonattainment areas for particulate matter, but none for SO_2, the Commission will continue to encourage additional control of particulate matter by including this exemption in the definition of "modification."

It should, however, be noted that this exemption is not included in the definition of "major modification," so a significant increase in SO_2 emissions from a major source will result in PSD applicability. The effect of this is to provide the exemption only for minor sources and minor modifications.

DEFINITION OF "STATIONARY SOURCE"

The proposed definition was revised to include language essentially identical to that of EPA at 40 CFR 51.24(b)(5) and (b)(6). The final rule allows more discretion to define stationary source on a case-by-case basis. The definition clarifies that a source in a nonattainment area may also be "an identifiable piece of process equipment" which makes it consistent with a recent federal case. See Natural Resources Defense Council et al. v. Gorsuch, et al., 685 F.2d 718 (D.C. Cir. 1982).

DEFINITION OF "FUGITIVE DUST"

The State Act exempts "fugitive dust" from regulation under the PSD program, including exemption from determinations of whether a source or modification is major and of increment consumption. C.R.S. 1973, 25-7-202(4), -202(5), -204(1)(b), and -204(2)(c). "Fugitive Dust" is defined as:

> Soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or from surface use or disturbance, including, but not limited to, all dust from wind erosion of exposed surfaces or storage piles and from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall

not include any fraction of such soil or other airborne particulate matter which is of a size or substance to adversely affect public health or welfare.

C.R.S. 1973, 25-7-202(3). Under such definition, fugitive particulates are regulated in the PSD program if they are "of a size or substance to adversely affect public health or welfare."

The exemption of "fugitive dust" is an issue because EPA counts total suspended particulates ("TSP") in determining increment consumption, maintenance of primary and secondary NAAQS, and source applicability. Therefore, to the extent that the state excludes some sizes of particulate matter in these determinations, its regulations are arguably less stringent than EPA's, although as explained below, because of depositional effects, there is generally an insignificant difference between the counting of TSP and the counting of smaller particulates.

The basis for setting the primary NAAQS is health effects; the basis for setting the secondary NAAQS is welfare effects. These are also the bases under the State Act for counting fugitive particulates in the PSD program. Because the bases for the State's inclusion of fugitive particulates and for EPA's promulgation of particulate matter NAAQS are essentially identical, it is appropriate to consider whether the NAAQS should be the standard for determining which particulates are "of a size or substance to adversely affect public health or welfare." However, EPA's current primary and secondary NAAQS for particulates are based on the "Air Quality Criteria for Particulate Matter" (1969), Div. Ex. R., which has generally been superseded by more recent research and analysis. For that reason, EPA in the CMA v. EPA Settlement Agreement has agreed in the near future to promulgate new primary, and perhaps secondary, NAAQS for particulates which would exclude particulates above a size posing no health or welfare risks.

EPA's staff review, in anticipation of revisions to the particulate matter definition and NAAQS, of the effects of particulate matter on health concludes that the size counted should be less than 10 um, which includes those particles capable of penetrating the thoracic regions. "Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information," EPA 450/5-82-001 (January 1982).

EPA staff review of welfare impacts indicates that visibility impacts are generally caused by fine particulates of less than 2.5 um. Id. at 122. However, such review recognizes that "the full size range of particles including dustfall can contribute to soiling, become a nuisance and result in increased cost and decreased enjoyment of the environment." Id. at 140. Further, the EPA "staff recommends consideration of the economic and other effects associated with soiling and nuisance when determining whether a secondary standard for TP or for TSP or other large particle indicator is desirable," id. at 141, and that "the basis for selecting a particular level for a secondary TP or TSP standard is a matter of judgment." (emphasis added) Id. at 147. The EPA staff review indicates that EPA will probably propose a fine particulate secondary standard but is undecided as to whether to establish a TSP or large particulate secondary standard, and that there is a basis for concluding that welfare impacts are being caused by all sizes

of particulates. Additionally, there was public and party testimony on welfare effects from fugitive particulates, some of which can be assumed to be large particles. See Markey, November 10 Tr. at 2 et seq.

One of the apparent concerns of parties and persons opposing the use by the Commission of TSP as a welfare standard is that the increment would be consumed and that no further development could occur. Division Exhibit W, which compares the modelled ambient impacts of TSP using a deposition model with particulates of 10 um or less using the same model, shows that the larger particles deposit quickly and that the ambient impact is relatively the same at a distance of 1000 meters or greater. The implication of this is that for many sources the modelling of increment consumption would have the same general results whether TSP is counted or whether only particles 10 um or less are counted (assuming the boundary of the source is 1000 meters or farther from the emissions point). Another implication is that welfare impacts from large particulates can only result within relatively short distances of a source.

Another concern was that the legislative intent was not to count TSP, although there was not clear evidence of legislative intent presented to the Commission. In any event, statutory language leaves the determination to the Commission to decide what particulates are of a size or substance to adversely affect health or welfare.

Given the foregoing considerations and the Commission's general interest in interpreting health and welfare effects of particulates consistent with EPA, but also given the uncertainty surrounding the revision of the particulate NAAQS by EPA, the Commission determines that in applying the definition of "fugitive dust", the adverse effects on health or welfare of fugitive particulate emissions should be determined individually for each source. Adverse welfare effects of nuisance and soiling will be presumed to occur if the source would have offsite, ambient, particulate impacts unless the permit applicant rebuts such presumption with clear and convincing evidence. The result of this presumption will be that in most cases, large particulates will be counted and there will be no difference between EPA's treatment of particulates and the state's. Other health and welfare effects shall generally be evaluated based on EPA's most recent research and analysis, but the permit applicant shall have the burden of proof of demonstrating with clear and convincing evidence which, if any, sizes or substances of fugitive particulates do not adversely affect health or welfare. This presumption of health and welfare effects has been incorporated in the definitions of "major stationary source" and "major modification," Section XI.A.4 on Exclusions from Increment Consumption, and Section V.D.3.c.(i)(B).

Upon EPA's adoption of revised NAAQS for particulates, the Commission may consider whether to revise this Statement of Basis and Purpose or the definition of "fugitive dust" to reflect such revisions. Should EPA decide not to have a secondary NAAQS incorporating nuisance and soiling (welfare) impacts of large particulates, the Commission will consider whether the welfare effects of large particulates are significant enough to be included, or whether they are relatively insignificant and, thus, should not be counted in the state PSD Program.

DEFINITION OF "MAJOR SOURCE" AND "MAJOR MODIFICATION"

The State Act permits the counting of fugitive emissions in determining whether a source or modification is major "only if the Commission adopts regulations to include fugitive emissions for that source category." CRS 1973, 25-7-202(4) and (5). The Federal Clean Air Act has a similar requirement at Sec. 302(j). EPA has interpreted the rulemaking requirement to mean simply a consideration in rulemaking of whether fugitive emissions should be counted and a requirement that affected industries be allowed to present policy or factual reasons why fugitive emissions should not be counted. 45 Fed. Reg. 52676 (August 7, 1980). Based on this rationale, EPA's rules currently list 26 categories of sources for which fugitive emissions are counted. A similar interpretation of the State Act is reasonable and has been adopted by the Commission.

One party recommended the addition of uranium mills and coal mines to the list of sources for which fugitive emissions would be counted. However, those sources could not be considered in this proceeding due to inadequate public notice. The Commission intends to consider those sources for listing as soon as practicable.

In the CMA v. EPA Settlement Agreement, the EPA has agreed to remove these 26 listed sources on the basis of industry's argument that the rulemaking requirement means that EPA must identify reasonable methods for measuring and modeling fugitive emissions from a category of sources. Although not agreeing that this is legally required under state or Federal law, the Commission has determined that Division Exhibit F, primarily, makes that demonstration for the ten categories located or expected to locate in Colorado.

It should be noted that measurement methods are not only available, but have been in use for a number of years and have provided test results that are the basis for the fugitive emission factors used by EPA and other control agencies, including the Colorado Air Pollution Control Division.

The following important parallels between stack emission factors and fugitive emission factors support the conclusion that fugitive emission factors are relatively as reliable and as reasonably available as stack emission factors:

- Both are based on numerous test data at different locations on different equipment or operations.
- Both are influenced by many variables (e.g., for a stack, flow rate, temperature, process variations; for a fugitive plume, wind speed, moisture content of the material, size distribution of the material).
- Neither is intended to represent actual emissions from a specific source. Actual acceptable test data for a specific or similar source would always be used in lieu of an emission factor.
- Both are intended as air management tools to allow pre-construction assessment of a source impact or as a representative value to average total emissions from a number of similar sources (e.g., all waste incinerators, commercial boilers, or coal storage piles) for

such air quality management purposes as determining "reasonable further progress" in nonattainment areas.

Stack and fugitive emission factors are both estimates; such factors are nevertheless widely used by control agencies and applicants alike. However, control agencies generally have no objection to, and would prefer, actual test data in lieu of factors whenever such information is submitted. (See Testimony of McCutchen, October 28, 1982; Egley, November 18, 1982, pp. 72-75 and p. 99; Bertolin, October 29, (am), p.39.)

One party's concern involved whether the emission factors for a facility can be extrapolated to a larger facility, specifically, from a 7000 ton per day oil shale processing facility to a 50,000 ton per day facility. Scale-up is a widely used and accepted approach throughout industry for estimating the feasibility of larger-scale facilities from results at smaller-scale facilities. There are a number of well-known precautions that should always be considered when extrapolating, and a control agency should be at least as cautious in extrapolating emission levels as the applicant is in extrapolating process data. Of course, if different equipment, such as a retort, is to be used at a proposed facility, an emission estimate would be based on mining and handling practices and on different processing equipment emission factors (e.g., refinery emission factors) which are similar to oil shale processing activities where such would be more accurate than extrapolation. Therefore, either through extrapolation or through the application of other more applicable and available emissions factors, relatively accurate emissions levels from all types of oil shale facilities can be calculated.

The same modeling techniques used to model stack emissions can be and are used to model fugitive emissions. Division Appendix F. One modeling parameter, deposition, is more critical in modeling fugitive particulate emissions and should be carefully evaluated. Fugitive particulate emissions usually contain more large particles than do controlled stack emissions. These large particles generally settle out rapidly, so that the impact at a plant boundary is usually much less than would be anticipated by the quantity of emissions at the source. See "Fugitive Dust." However, acceptable models exist which incorporate deposition and thereby provide a reasonably accurate assessment of fugitive particulate emission impact. Models without deposition can be used for gaseous and fine particulate fugitive emissions. Models have recognized limitations, but they are as accurate for fugitive emissions as for stack emissions.

The following information, which is primarily from Division Exhibit F, concerns the major policy and factual reasons for counting fugitive emissions from each of ten source categories:

Coal Cleaning. A typical plant would process 10,000 tons per year (TPY) of coal and emit approximately 280 TPY of particulate matter, 96% of which would be fugitive emissions. Over 100 TPY of the fugitive emissions are less than 15 microns in diameter and are considered inhalable particulate (IP).

Portland Cement. The typical plant produces 500,000 TPY of cement and emits approximately 370 TPY of particulate matter, 60% of which would be fugitive emissions.

Iron & Steel Mills (Including Coke Ovens). A typical plant would produce several million tons of steel per year and emit approximately 3,600 TPY of particulate matter, 64% of which would be fugitive emissions. The coke plant would produce over half a million tons of coke per year and emit approximately 700 TPY of particulate matter, 10% of which would be fugitive emissions, and 1,500 TPY of uncontrolled fugitive hydrocarbon emissions.

Petroleum Refineries. A typical plant would process 25,000 barrels of oil per day and emit approximately 1,100 TPY of hydrocarbons, 57% of which would be fugitive emissions.

Lime Plants. A typical plant would produce 300,000 TPY of lime and emit approximately 1,800 TPY of particulate matter, 33% of which would be fugitive emissions.

Fuel Conversion. A typical shale oil plant would produce 50,000 barrels per day of oil and emit 4,800 TPY of particulate matter, 12% (500 TPY) of which would be fugitive emissions, and 8,611 TPY of hydrocarbons, 12% (1,080 TPY) of which would be fugitive emissions.

Sintering Plants. A typical plant would emit approximately 400 TPY of particulate matter, 20% (80 TPY) of which would be fugitive emissions.

Power Plants and Boilers. A typical, but well-controlled, new 500 MW power plant burns 2.1 million TPY of coal and emits approximately 620 TPY of particulate matter, 18% (110 TPY) of which would be fugitive emissions. These fugitive emissions are from coal handling and storage, among the most visible and complaint-related of all fugitive emission sources.

Petroleum Transfer and Storage. A typical plant has a capacity of 476,000 barrels and an annual throughput of 7,123,000 barrels per year and emits 267 TPY of hydrocarbons, 72% of which are fugitive emissions.

In conclusion, the Commission has determined that fugitive emissions from the above sources should be included in determining whether the source or modification is major for the following general reasons:

(a) Fugitive emissions consist of the same pollutants that are emitted through stacks and regulated as stack emissions;

(b) The quantity of fugitive emissions, both in absolute and in relative terms, is significant; and

(c) Although this finding is not legally required, there are methods reasonably available for measuring and modeling fugitive emissions.

PUBLIC COMMENT AND HEARING REQUIREMENTS

The Commission has adopted a regulation designed to offer maximum opportunity for any interested person to learn about, and become involved in, the PSD permit review process. Adopted in the final rule are proposals by one party that (a) the public notice be printed not only in a newspaper of local distribution, but also in one of state-wide distribution to increase the number of potential interested persons reached by the notice,

(b) that the public hearing be held at least 60 days after the Federal Land Manager (FLM) has received the notice and permit application, to allow the FLM adequate response time, and (c) that any interested person receive notice of public hearing. In addition, the Commission agrees with the Division proposal to implement and maintain an "interested party" mailing list as described in Division Exhibit M.

The proposed rule contained a requirement that the Division notify the county commissioners in affected counties when a proposed source would consume 50 percent or more of the remaining PSD increment. Two parties proposed that this requirement be deleted as allowing local land use decision-makers to unduly influence air permit decisions. The intent of this requirement, which has been modified to notify county commissioners of any PSD permit applications, is not to provide opportunity for counties to comment to the Division on land use; rather, it is to provide information to the counties on proposed sources so that the counties can more adequately assess their priorities and needs. PSD permit approval or denial is to be based solely on the criteria specified in this regulation; land use decisions are, and will remain, the responsibility of local governments.

Regarding the issue of land use decisions, one party commented that Section IV.C.4.e(iii) of this final rule, which solicits comments from interested parties on alternatives to a proposed PSD source or modification, constitutes the inclusion of land use factors in permit approval determinations. The Commission did not remove this section because it is required by the State Act, CRS 1973, 25-7-114(4)(f)(I)(B). Furthermore, the intent of soliciting such alternatives is for the assessment of alternatives with respect to control technology and source impact, not land use.

CONTROL TECHNOLOGY REVIEW

One party proposed that the last sentence in Section IV.D.3.a.(i)(C), which requires the owner or operator of a phased project to demonstrate the adequacy of a previous best available control technology (BACT) determination, be deleted. The Commission did not delete this sentence because (1) an EPA regulation requires such a condition and deletion of this requirement could be considered less stringent, and (2) the requirement is intended to provide for the possibility of a different BACT determination if new technology has developed between the time of permit review and the next phase of a project for which construction has not yet commenced, a time period which can easily exceed five years on large projects.

POST-CONSTRUCTION MONITORING

Five parties proposed that post-construction monitoring requirements be limited to a maximum of one year. The Commission recognizes the concern of lessening the burdens on owners or operators, particularly if the information being gathered is unnecessary. But in many cases, there can be a very real need for monitoring for periods of time greater than a year to obtain reliable data. Accordingly, the final rule requires post-construction ambient monitoring for a period up to one year; additional ambient monitoring can be required only if it is necessary to determine the

effect of emissions from the source on air quality. This necessitates an evaluation by the Division regarding the adequacy of the data, and a showing by the Division that additional monitoring is needed, before more than a year of monitoring could be required.

OPERATION OF MONITORING STATIONS

Three parties proposed that the rule be written to allow the latest changes in EPA-approved methods to be used without first having to amend the rule. The Commission agrees with the need to use the most up-to-date approved methods. Accordingly, the final rule specifies that "EPA accepted procedures....as approved by the Division" can be used.

ADDITIONAL IMPACT ANALYSIS

Section IV.D.3.a.(vi) of the final rule requires an owner or operator of a proposed PSD source to provide an analysis of the impairment to water that would occur as a result of emissions associated with the source.

This analysis is not required by the EPA rules. The inclusion of water in the additional impact analysis reflects a strong concern by the Commission based in the record regarding acid deposition. At this time there is neither the information nor the evidence of damage to justify regulating acid deposition in Colorado. However, the vulnerability of high altitude lakes to acid deposition and the potential increases in acid-forming pollutants such as SO_2 and NO_x on the Western Slope from sources subject to the PSD program, particularly oil shale processing and large power plants, clearly demonstrate a need for a program to gather data, track and analyze this potential environmental problem. The inclusion of water in the additional impact analysis is intended to gather information on the problem; this analysis is not intended to affect permit approval or denial or control technology review decisions except for determinations of adverse impact to AQRVs in Class I areas. The issues which have been raised concerning water impact analysis are discussed in detail below.

a. Legal Authority to Require an Impact Analysis of Acid Deposition

The State Air Quality Control Act requires a PSD permit hearing to consider "air quality impacts of the source... and other appropriate considerations." C.R.S. 1973, 25-7-114(4)(f). Acid deposition can be construed as an indirect but potentially significant air quality impact which should be analyzed, especially in light of one of the stated purposes of the PSD Program "to protect public health and welfare from any actual or potential adverse effect which....may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air (emphasis added)." Section 160(1) of the Clean Air Act. Acid deposition in water is those pollutants in other media originating as emissions to the ambient air.

The Federal Land Manager (FLM) of a Class 1 area is responsible for determining whether a source has an adverse impact on air quality related values which is generally defined as follows:

Any value of an area which may be affected by a change in air quality. Examples include flora, fauna, soil, water, visibility, culture, and odors. Forest Service Comments, October 7, 1982, p.1.

Acid deposition may adversely affect such values, and thus an analysis of its effects should be required for review by the federal land managers of affected Class I areas.

b. Major Issues

The major issues discussed during the hearings are summarized below:

1. Are Colorado's watersheds sensitive to acid deposition?

John Turk of the USGS is involved in acid deposition research in Colorado and stated that 370 lakes in the Flattops Wilderness area comprising 157 hectacres would be sensitive to potentially harmful degrees of acidification if precipitation attains an average pH of 4.0. (Exhibit 3, Nov. 10 Tr. at 153)

Ben Parkhurst maintains that there is talk of Colorado's lakes being sensitive (Oct. 29 Tr. at 146), but states that sensitivity must be considered together with acid inputs. Thus, if acid input to the water system is not sufficiently large the sensitivity question is not important.

Dr. William Lewis stated that Colorado's lakes are sensitive to acid deposition as demonstrated by the measured loss in buffering capacity he found in his studies. (Nov. 18 Tr. at 136-138)

In conclusion it can be inferred that some Colorado lakes are poorly buffered and if sufficient levels of acidity are introduced into the lakes, these poorly buffered "sensitive" lakes could develop acidification problems.

2. Has acidification occurred in any Colorado lakes?

John Turk of the USGS states that there has not been any large degree of acidification taking place in the lakes or streams he has studied in the Flattops. (Nov. 10 Tr. at 172)

Ben Parkhurst also states that there is no evidence to show that any acidification has taken place in Colorado Lakes. (Oct. 29 Tr. at 144 and 150-152)

Dr. William Lewis states that he has noted pH changes in lakes he has studied (Nov. 18 Tr. at 140), but he does not consider that to be the major point in regard to the acidification question. Lewis considers the loss of buffering capacity to be the best indicator of acidification effects on lakes and he has found statistically valid evidence to show that this has occurred. (Nov. 18 Tr. at 136-138)

In summary, there is some evidence that pH has dropped slightly in some of the lakes Lewis has studied, however, it does not appear that acidification (drop in pH) has occurred to any large degree in Colorado, however, in the prediction of future impacts, buffering capacity should be examined and this has dropped in the lakes examined by Lewis.

3. Is there a potential for acidificiation in the future?

Paul Ferraro has done some research on estimating potential acid deposition impacts on Colorado and has determined that under different energy development scenarios, there is a potential for acidification in sensitive lakes. (Nov. 10 Tr. at 158-159)

Parkhurst states that he would not expect acidification to be a problem in the future, unless the acid deposition reaches levels similar to those found in the Northeast. (Oct. 29 Tr. at 154-156) Parkhurst states that Ferraro's study is conservative and a pH drop to 5.8 would not effect fish.

Oppenheimer (EDF Exhibit 32 p. 6) states that if a 1 ug/m^3 increase in SO_2 (annual average) occurs, acid deposition levels could result which would be damaging to sensitive lakes.

In summary, it can be inferred that there is a potential for energy development activities to cause increased levels of acids to be deposited in the watershed, and effects on pH may occur depending on the buffering capacity of the water. The degree of the effect will depend on the amount of acid, thus the amount of emissions.

4. Are there adequate methods of modeling for acid deposition effects on watersheds?

Paul Ferraro has utilized what he refers to as a "first cut" approach in estimating impacts due to acid deposition. The approach utilizes methods employed by John Turk for determining sensitivity of waters and methods for estimating deposition rates developed by Systems Applications, Inc. (Nov. 10 Tr. at 154-176)

Oppenheimer (EDF Exhibit 32 p. 12-13) states that acid deposition modeling could be conducted using presently available plume models (approved by EPA) which incorporate a plume depletion function to account for deposition. Results from this model could then be compared to deposition standards.

In summary, there appear to be only screening techniques available at this time for estimating the impacts of acid deposition.

5. What level of acidification is dangerous to aquatic ecosystems?

Parkhurst stated that fish can survive in pH's as low as 4.1. (Oct. 29 Tr. 143)

Lewis states that he feels that trout would be adversely impacted if pH dropped significantly below six as an average. He would not expect trout populations to be able to reproduce and grow at a pH below six. (Nov. 18 Tr. at 152,153)

Parkhurst also states that a permanent pH decrease from 6.0 to 5.0 is not a natural variation and that many species would probably be eliminated and species numbers and diversities reduced. (Nov. 10 Tr. at 110)

Parkhurst also testified that there is not any evidence to show that trout are capable of both reproducing and maturing in an environment which is consistently of a pH of 4.5 or less. (Nov. 10 Tr. at 114)

In conclusion, the record does not clearly identify the point at which damage to fish will occur. However, testimony indicates that below a pH of 4.5, and maybe below 6, fish populations would not be able to reproduce and mature.

Summary

Few definitive conclusions could be drawn from the evidence and testimony. The main point of agreement was that at the present time there has not been any adverse acidification identified in any of Colorado's watersheds. The buffering capacity of lakes appears to be the important factor to consider in determining sensitivity of lakes. Testimony was given that buffering capcity has diminished in certain mountain lakes; however, the cause of this loss has not been identified. No agreement was reached on what level of pH could be tolerated by aquatic ecosystems without causing adverse impact. It could be agreed by all parties that more research must be conducted on acid deposition so that its effects may be better understood and predicted by appropriate models.

Although more information is needed, studies in the Northeastern United States, Canada, and Europe show that acid deposition can be a serious problem (Oct. 29 Tr. at 144-145 and EDF Exhibit 32 p.3). Colorado contains many lakes which are sensitive, exhibiting low buffering capacities. If energy development occurs on the Western Slope emissions of acid precursors will grow substantially, which will result in increased acid deposition levels. The nature of energy industry in Colorado may result in rapid growth in a short period of time, which will occur before all information on acid deposition is understood. If a large industry develops and new information shows that ambient air standards and increments do not protect the state from acidification problems, a valuable resource may be damaged. For these reasons, the Commission intends to remain vigilant in monitoring this problem, and as analytical capabilities are developed or a problem develops, to re-address this issue for possible regulatory and/or legislative solutions. A subcommittee should be formed, if resources permit, to develop specific guidelines for acid deposition analyses based on recent modelling innovations. In the interim, proposed PSD sources emitting acid or acid precursors will be required to analyse the impact of these emissions on water, utilizing the most up-to-date techniques available.

AREA CLASSIFICATIONS

Several parties objected to the application of Class I sulfur dioxide increments to those areas of Colorado listed in Section VIII.B. which are otherwise Class II areas. The sulfur dioxide Class I increments are required to be enforced in these areas by CRS 1973, 25-7-209. However, pursuant to CRS 1973, Section 25-7-105(8) (Supp. 1982), this Section VIII.B. may not be made a part of the State Implementation Plan (SIP) until these areas are redesignated as Class I under the procedures of Section IX. Until they are redesignated, they may only be enforced under state law and regulations. However, unlike Class I areas, the increment in these areas may be protected now. See CRS 1973, 25-7-210.

The Commission has also determined that the variances from increment consumption allowed by Sections XIV.C., XIV.D., XIV.E., and XIV.F. for Class I areas should also apply to the areas listed in Section VIII.B. It is a reasonable interpretation of CRS 1973, 25-7-209 that if the Class I (sulfur dioxide) increments are to apply to such areas, the variances from the increments should also apply. There is nothing in the State Act to indicate that the areas listed in CRS 1973, 25-7-209, are to be given better air quality protection than Class I areas, which would be the result if the variances did not apply.

REDESIGNATION

Several parties objected to what were considered burdensome requirements for redesignating areas to Class I. The adopted rule incorporates only the minimal requirements for redesignation from state and federal law. See CRS 1973, 25-7-208; Sec. 164 of the Federal Clean Air Act; 40 CFR 51.24(g). However, the Commission did lessen the burden imposed by the proposed rule on those persons requesting a redesignation by allowing such requests to be made without providing all of the information necessary for a redesignation. Who would provide such information is not specified so that it could be any combination of federal, state and private entities.

TECHNICAL MODELING & MONITORING REQUIREMENTS

Several parties proposed the inclusion of future EPA amendments or guidelines in this section of the regulation, which specifies the air quality model, monitoring and stack height requirements to be used. In response, the Commission adopted the use of "EPA approved" terminology instead of references to specific documents.

Two parties proposed language making EPA or the state responsible for any needed meteorological data. The Commission did not adopt this proposal because it is the applicant's responsibility to demonstrate that it will not cause exceedance of an NAAQS or increment, and meteorological data are nearly always needed to make such determinations. If the Division has such data, it has an obligation to make that data available to the applicant.

INNOVATIVE CONTROL TECHNOLOGY

Several parties proposed that the phrase "greater than or" be deleted from Section XIII.B.2. which specifies that the innovative system achieve emission reductions "greater than or equivalent to" BACT. The EPA regulation uses the phrase "equivalent to" and the parties considered the proposed state rule more stringent. The Commission does not consider the phrase "greater than or equivalent to" (emphasis added) to be more stringent, but instead to be a clarification that an acceptable innovation can result in either equivalent or lesser emissions from the source, but not a higher level of emissions. The preamble to the EPA PSD regulation (Div. Exhibit B, p. 84) clearly specifies that the "...final emission limitation must at least represent the BACT level that would have been initially defined..."

FEDERAL CLASS I AREAS

1. (Section XIV.A.) The State's Independent Determination of Adverse Impact to Visibility

   Section XIV.A. allows the Division or the Board (if applicable) to determine independently if there is an adverse impact to visibility in Class I areas if the federal land manager (FLM) fails to make such determination or such determination is in error. This authority is intended to allow the state to fulfill the FLM's responsibility for protection of visibility if for whatever reason, including political, the FLM fails to do so. The Commission recognizes that scenic vistas are an important resource of the State of Colorado. (Colorado Mountain Club Exhibit #1) A subcommittee may be formed to further develop visibility protection for the State of Colorado.

   Several parties suggested problems with the state's independent authority to make such visibility determinations. These consisted of (1) measuring or predicting visibility impairment, (2) quantifying man-induced , as opposed to naturally-occurring, visibility impairment, (3) the subjectiveness of visibility impairment, (4) the lack of correlation of current particulate standards to visibility impairment, and (5) the lack of guidance in the regulation regarding determinations of significant and adverse visibility impacts.

   The Commission's response to these concerns are as follows:

   (1) Although it is true that there are not federal reference methods for measuring visibility at this time, there are reliable means to accurately measure and predict visibility impairment. Scientific instruments such as the telephotometer, nephelometer, and the fine particulate monitor are recognized as being capable of obtaining objective information on visibility-related parameters. Photographs are also useful in visibility assessment.

   Visibility theory involving scattering and absorption of light is well documented and has been incorporated into the models described in the Workbook for Estimating Visibility Impairment (EPA-450/4-8-031). The preface to the Workbook for Estimating

Visibility Impairment states: "EPA believes these techniques are at a point where the results should now be employed to assist decision-makers in their assessments." "These techniques" include the Plu-Vu Model. Div. Ex. J at iii. Thus, these models are appropriate for use at this time.

(2) It is possible to determine if a source of visibility impairment is natural or anthropogenic through various chemical/physical analysis techniques. Improvements in air sampling and analytical techniques have made available, for the first time, detailed information on the chemical and physical nature of the ambient aerosol and of source emissions. Using these chemical "fingerprints," particle morphology and the natural variability of airshed sources, recent developments in receptor models have provided new techniques of assigning source contributions.

(3) Perception of visibility impairment is subjective and involves individual variability; however, norms do exist around which an assessment can be made. As noted above, EPA supports the use of its Workbook for Estimating Visibility Impairment as a guide to decisionmakers.

(4) Particulate standards do not address visibility-related effects. It is also true that the major antropogenic visibility impairing pollutant is fine particulate matter. Since the Class I increment for particulate is in terms of total mass concentration, rather than fine particulates, visibility impairment could occur without the increment being violated. Furthermore, the particulate increment is a maximum allowable ground level concentration; consequently it will not protect visibility impaired by plumes at elevations above ground level. These facts form the basis for the Clean Air Act requirement that visibility should be assessed and regulated in a separate analysis. Div. Ex. S.

(5) The primary guidance for determinations of adverse impact to visibility would be the Workbook for Estimating Visibility Impairment which has very specific guidelines.

2. (Section XIV.B.) Pre-Application and Operational Monitoring of Air Quality Related Values (AQRVs)

Section XIV.B. of the regulation allows the Division to require a source which will have or is likely to have an impact on any Class 1 area to conduct monitoring to establish the baseline status of and impacts on AQRVs in such Class 1 areas. EPA has not imposed this requirement on applicants, although under EPA rules and the Commission rule, Section IV.D.3.(a)(vi), an Additional Impact Analysis is required which would include an analysis of impacts on AQRVs based on available data, for example, through literature searches. The data gathered from such monitoring are important and necessary in aiding the federal land manager of a Class 1 area in determining whether or not a source will cause an adverse impact on AQRVs and the state in deciding on concurrence with such determination. The data also aid the public information function of the Additional Impacts Analysis. The authority to require submission of such information includes, but is not limited to, CRS 1973, 25-7-206(2), 25-7-106(5) and (6), and 25-7-114(4).

A. National Park Service and Forest Service Testimony and Positions

The National Park Service ("NPS") and the Forest Service ("FS") supported the rule as a supplement to their current monitoring activities on the basis that the data is necessary to determining adverse impacts on AQRVs, including visibility. See Mitchell, Nov. 18 Tr. at 122 et seq., 161 et seq.; Haddow, Oct. 28 (p.m.) Tr. at 22 et seq., Nov. 10 Tr at 68 et seq.; Region 2-USDA Forest Service Comments on Proposed PSD Rule; Comments on the May 19, 1982 Proposed Colorado PSD Regulation by National Park Service Air Quality Division.

The NPS stated its willingness to provide a list of sensitive receptors of AQRVs to applicants for monitoring. Mitchell, Nov. 18 Tr. at 162.

The Forest Service recognized severe technical difficulties and high costs of monitoring some pollutants and visibility in wilderness areas. Haddow, Oct. 28 (p.m.) Tr. at 22 et seq. However, lichen monitoring could be done without great difficulty and special use permits are available for some complex monitoring. Haddow, Nov. 10 (p.m.) Tr. at 112., The FS intends to identify sensitive indicators of AQRVs for each Class 1 area, e.g. 2 or 3 species of lichen and 2 or 3 scenic views, and proposes that the state require the monitoring of such indicators Id. at 82-83.

B. Environmental Defense Fund's (EDF) and Friends of the Earth's (FOE Position

EDF's and FOE's general contentions in support of the proposed monitoring requirements were:

1. the technology for monitoring of AQRV's exist;

2. the Forest Service has identified AQRV's for wilderness areas;

3. although some monitoring is being done, most areas are not being monitored and will not be without the participation of industry;

4. decisions on adverse impacts to AQRVs cannot be made rationally without reliable scientific evidence; and

5. the state is required to have a visibility monitoring program by EPA rules, 40 CFR 51.305.

"EDF and FOE Final Recommendations; Summaries of the Record and Legal and Policy Analyses," Section IV.

C. Trade Association Parties' Position

The Trade Association Parties' general contentions in opposition to the monitoring requirements were:

1. The Clean Air Act places the responsibility on the federal land manager to determine adverse impacts on AQRVs and, thus, the responsibility to obtain the data necessary to make such determination;

2. There is insufficient information available at this time to develop an AQRV monitoring program in that sensitive receptors for each Class 1 area have not been identified, there is no monitoring reference method available and no validated models to project impacts of particular emissions levels;

3. In some Class 1 areas monitoring is either physically impossible or inordinately expensive; and

4. The Division's discretion in specifying sensitive receptors is too vague and broad.

Trade Association Parties' Closing Argument at 31-34.

D. Commission Analysis and Decision

The above-cited testimony and evidence and other portions of the record support the conclusion that monitoring of AQRVs or sensitive receptors of AQRVs would be helpful, and in many cases necessary, to determine whether adverse impacts on AQRVs would occur. It is also evident that baseline data are not available and may never be developed by federal land managers for some AQRVs and sensitive receptors and for some Class 1 areas. Thus, the primary issue is where to place the responsibility for obtaining background data on AQRVs - the federal land manager, the state and/or the applicant.

As the Forest Service suggested, it is traditional permitting practice to require a permit applicant to obtain the data upon which the agency decides. Haddow, Nov. 10 (p.m.) Tr. at 89. This practice is consistent with the economic philosophy that companies should internalize their environmental costs. Furthermore, the Clean Air Act does not change such practice; it places the "affirmative responsibility" on federal land managers to protect AQRVs and to consider whether there will be an adverse impact on AQRVs but does not expressly state whose responsibility it is to provide necessary data upon which to exercise their responsibiity.

The Commission has determined that there are available research and test methods for obtaining background data and impact data on many AQRVs which will be critical in making adverse impact determinations, even though there are not generally adopted reference methods or modelling techniques. For example, to perform a reasonably accurate visibility impairment analysis, background data is needed. Div. Ex. J. Although there are no generally accepted reference methods for estimating visibility impacts, methods for estimating visibility impairment have been developed and are relatively sophisticated. See Div. Ex. J.; Geier, Oct. 28 (a.m.) Tr. at 62-71. The rule recognizes this potential limitation on monitoring AQRVs by only allowing monitoring if "monitoring methods are reasonably available and research and development of monitoring methods are unnecessary."

In response to the objection that the Division's discretion in selecting AQRVs for monitoring is too vague and broad, the rule provides:

1. A definition of AQRVs (in the Common Provisions Regulation);

2. That the Division will consult with the federal land manager in the selection of AQRVs; and

3. That the AQRVs selected must be important to the affected Class I area and there must be cause to believe that monitoring of the AQRVs will provide a basis for evaluating effects to the AQRVs.

In response to the objection that the monitoring of AQRVs may not be economically reasonable, the rule provides that:

1. no duplication of monitoring may be required;

2. not more than 3 AQRVs may be required to be monitored;

3. monitoring methods must be reasonably available;

4. monitoring may only be required if the source is a major contributor to the expected effects on the AQRV; and

5. it is economically reasonable as compared to other monitoring and analysis expenses required of a PSD permit applicant.

SULFUR DIOXIDE AMBIENT AIR STANDARDS FOR THE STATE OF COLORADO

The proposed rule would have revised the Colorado ambient air quality standard for sulfur dioxide to be consistent with the federal standard. Because the Colorado standard is not enforceable in the permitting process, see CRS 1973, 25-7-114(4)(g), the Commission ordered on November 10, 1982 that revisions of the state ambient air quality standard for SO_2 be removed as a subject of this rulemaking.

The Commission agreed to reconsider the state standard if and when it becomes enforceable.

PUBLIC ACCESS TO CONFIDENTIAL INFORMATION

One party raised the issue of whether Section VII of Regulation NO. 3 improperly restricts access to confidential information which would be available under the Federal Clean Air Act. Section VII may not be considered for amendment in this rulemaking due to lack of public notice.

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(c) require sources of other than hazardous, toxic or odorous pollutants whose uncontrolled emissions are less than 5 TPY but greater than or equal to 1 TPY to file an APEN. These sources would be exempt from permit requirements (with one exception) unless the Division demonstrated using specific guidelines that the source was significant. The Division would have to notify the source that a permit was required; otherwise, the source would be exempt from permit requirements. The APEN should provide all needed information to preclude unnecessary delay in making such determinations.

Emissions from these 1 to 5 TPY sources, according to a Division study, account for no more than two percent of total emissions, yet comprise 20 percent of the total sources obtaining permits. Such sources could, however, produce 24 hour ambient air impacts as high as 10 ug/m^3 which could be significant in certain cases, especially if such source would cause a violation of a NAAQS or increment or by itself or in combination with similar sources cause a health or welfare problem or interfere with reasonable further progress towards attainment.

Volatile Organic Compound (VOC) sources are treated differently. The record demonstrates that 45 percent of the total of all uncontrolled stationary source VOC emissions are emitted by sources ranging from 1 to 5 TPY in size. Most of these sources locate in urban areas such as Denver, which is non-attainment for ozone. Since VOC emissions are an ozone precursor, such sources should be subject to permitting requirements to ensure compliance with applicable VOC emission limitations.

Therefore, VOC sources equal to or exceeding 1 TPY (uncontrolled) locating in non-attainment areas must both file an APEN and obtain a permit. VOC sources ranging from 1 TPY to 5 TPY locating in attainment areas where there is less concern for ozone will be treated like other sources and will be at least required to file an APEN.

(d) require sources of other pollutants whose uncontrolled emissions equal or exceed 5 TPY to file APENs and obtain permits unless specifically exempted from such requirements. These sources constitute approximately 98 percent of total uncontrolled emissions, and the Commission feels that such sources should be required to submit APENs and obtain permits unless specifically exempted as a class or as an individual source.

II. "SIGNIFICANT CHANGE" IN EMISSIONS REQUIRING THE FILING OF A REVISED APEN

The purpose of this revision to Sections II.B. and II.C. is to clarify and revise the requirements for reporting changes in emissions (either increases or decreases) to the Division.

The record shows that an acceptable emissions inventory, usually referred to as the EIS (for Emissions Inventory Subsystem), is essential for effective air quality management and that the revised APENs provide an effective system for obtaining EIS data. Revised APENs reporting significant changes in emissions are required by statute, C.R.S. 1973, 25-7-114(1), and the $40 fee for a revised APEN defrays the cost of processing the information (see "Fiscal Impact"). The levels set for reporting emissions changes are significant and will allow the effective tracking of air quality changes and use for air quality management.

It is obvious, however, that there has been confusion concerning these requirements in the past. The following statements should clarify the confusion:

A. Revised APENs reporting significant changes in emissions are to reflect actual emissions for the preceeding year, not projected or maximum emissions. Actual emissions are the emissions actually emitted by a source into the atmosphere on an annual basis, determined as accurately as is feasible using production or processing or combustion rates, and emission factors, or test results, or other accepted methods for estimating emission rates. These actual emission rates are the "actual emissions" used in the PSD definition of "actual emissions", except that for PSD, an "actual emission" rate can be ignored if it is not representative of "normal" operation. The APEN forms should clearly distinguish an APEN filed with a permit application (which estimates maximum anticipated production or emission levels) and a revised APEN (which reports actual emissions when a significant change in emissions has occurred). Changes in emission rates reported on a revised APEN shall not be used to modify allowable emissions rates or permit conditions for the source unless the revised APEN is filed specifically for the purpose of modifying an existing permit or obtaining a new permit, in which case the APEN must (1) be accompanied by an application, written request, or letter of explanation from the applicant and (2) reflect maximum anticipated production or emission level changes resulting from the requested action, not "actual" emissions from the existing source.

B. Each affected source should discuss with the Division the most efficient format in which significant changes can be reported and the degree to which similar emission sources can be combined for reporting purposes. It is the intent of the Commission that the Division carry out this flexible approach to the maximum extent possible in order to reduce the burden on regulated sources.

The Commission has made these revisions economically reasonable by easing the burden of reporting by allowing the use of any mutually convenient reporting format in lieu of a "standard" form and by allowing individual, but similar, emission point sources to be grouped. It should be stressed that this grouping of emission point sources for purposes of reporting significant changes to the Division does not constitute, nor does it set any precedent for, any netting or bubbling or other emission trading approach; emission

trading can be conducted only through specific regulations pertaining to this activity. These APEN groupings also do not relieve the source of any obligation to meet any emission control limitations for specific point sources within the group.

In general, the reporting requirements for significant changes have been given greater latitude than existed before, partly in response to concerns that, at certain reporting levels, the accuracy requested exceeds the accuracy of the available data, and in response to EPA requirements for reporting EIS changes which are in the range of 5 TPY for small sources or 5 percent for 100 TPY or larger sources. The adopted "significant change" definition reflects a deliberate selection based on the public hearing testimony and the exhibits and testimony submitted by the Division and interested parties during these deliberations. For odorous, hazardous or toxic pollutants, any emissions change must be reported (again, on an annual basis). With changes of only 0.0004 TPY (for beryllium), for example, considered "significant" by EPA, close scrutiny of all hazardous, toxic and odorous pollutants is needed.

III. REVISED APEN FEES

An issue raised is whether the Commission has statutory authority to require a $40.00 filing fee with a revised APEN. The statutory authority for a fee states, "Any person required by the Commission to file an air pollutant emission notice shall pay a nonrefundable fee of forty dollars....." C.R.S. 1973, 25-7-114(5)(a). The statutory authority for requiring the filing of APENs and revised APENs refers to: "air pollutant emission notice" and "revised emission notice", C.R.S. 1973, 25-7-114, the latter reference being to "revised (air pollutant) emission notice". Section 25-7-114(5)(a) does not limit the $40.00 fee to initial APENs filed for a source but refers simply to "air pollutant emission notice" which may be interpreted to include both initial and revised APENs. Testimony by the Division estimated the administrative costs of processing a revised APEN at over $40.00. For these reasons, the Commission finds that it has authority and should charge a $40.00 filing fee for revised APENs.

IV. NON-PERMITTED SOURCE APPLICABILITY

A source existing before the adoption of the first Colorado Air Quality Control Act and the date of its implementing regulations of February 1, 1972, is not required to obtain a permit. This revision is intended to clarify the date prior to which existing sources are considered "grandfathered" and exempt from a permit requirement.

V. STATIONARY INTERNAL COMBUSTION ENGINE EXEMPTION

The purpose of this revision is to decrease the extent of the exemption for stationary internal combustion engines. Prior to this revision, stationary internal combustion engines less than 1000 HP in attainment areas and less than 250 HP in nonattainment areas were exempt from permit requirements. The record shows that these sources not only constitute large individual sources (a 1000 HP engine can emit 96 TPY of NO_x), but also can be situated close to

each other (one compressor station in Colorado consists of 15 925 HP stationary internal combustion engines which can emit a total of 1340 TPY NO_X). Small stationary internal combustion engines in terms of emissions (less than 5 TPY) or size (less than 50 HP) are excluded from permit requirements. In addition, the Commission has retained the exclusion from permit requirements for emergency power generators and added an exclusion for stationary internal combustion engines powering portable oil drilling rigs.

The exclusion for stationary internal combustion engines on portable oil drilling rigs is based on testimony and on information developed by the Division which indicates that these sources move frequently (average 10 days per well site), generally are located at remote sites, and emit only 1.3 tons NO_2 per well drilled. The Division indicated that the total estimated NO_X emissions from portable oil drilling rigs in Colorado could be as high as 2200 TPY and that this could increase the total NO_X emissions inventory in specific active drilling areas by as much as 50 percent. To determine if an air quality problem exists for these sources, testimony from the Colorado Petroleum Association (CPA) indicates a willingness to provide the information needed by the Division to assess emissions by modifying existing data-gathering reports.

One party requested a delayed effective date for this revision so that compressor stations planned for construction during the summer of 1983 would not be held up by an unanticipated requirement that permits be obtained. Such a request is reasonable, and the delayed effective date of October 1, 1983, has been adopted.

VI. PUBLIC COMMENT FOR DEMOLITION AND NON ATTAINMENT AREA PERMITS

Since the record shows that sources for which public comment has been received are in every case either large (greater than 25 TPY) or controversial (e.g., odorous emissions), the public comment requirement for sources in non-attainment areas is being raised from 5 TPY to 25 TPY, which makes it the same as for sources locating in attainment areas. Demolition projects have been exempted from public comment requirements because they often need to be completed, by contract agreement, in a short period of time, and the need for public comment has on occasion been an unnecessary time delay. Very few public responses have been received for small demolition projects. The Division retains the authority to require public comment for demolition projects if considered warranted for reasons of asbestos emissions or other significant concerns.

VII. CONSTRUCTION SCHEDULE DEADLINES

Under previous rules, owners and operators applying for new permits have not been held to any time limits for commencing construction or operation once the permit to operate has been obtained. Sources must be evaluated (C.R.S. 1973, 25-7-114(4)(b)) to determine whether operation of the source will comply with all applicable regulations, an evaluation that can be made with an acceptable degree of certainty provided that the source actually does construct and operate within a reasonable period of time following receipt of the permit. However, a source which delays construction for a number of

years may finally initiate operation at a time when ambient air concentrations or other factors used in evaluating compliance have changed; in addition, delaying construction and operation results in the reserving of emissions that could have been used by other applicants.

This provision implements an 18-month construction deadline, imposed by the Division, to all sources, major and minor, statewide. Owners and operators will be prevented from applying for a permit without intending to construct in the near future, a form of "reserving" emissions or increments which makes compliance analysis difficult and could inhibit real economic growth in the state. Under these provisions, the Division will grant necessary extensions to permits that are issued, so a source with good reason for delaying a project would not be penalized by loss of a permit.

VIII. NON-REACTIVE VOLATILE ORGANIC COMPOUNDS (NRVOCs)

The EPA maintains a list of NRVOCs which are considered to be either totally non-reactive or insignificantly reactive in the formation of ozone. NRVOCs can therefore be used to replace reactive VOCs as offsets.

A list of additions to this list appeared in the July 22, 1980 Federal Register. The revision to Regulation No. 3 updates the list of NRVOCs, which are non-hazardous, to conform to EPA's revised list of NRVOC. In addition to this, the revision extends the concept of NRVOC Statewide (instead of nonattainment areas only), and clarifies that NRVOCs will be reviewed separately during initial approval analysis of a new source. Previously, NRVOCs pertained to nonattainment areas only and were used only on the basis of emission offset credit. The revision clarifies that NRVOCs can be substituted for VOCs for banking and other emission reduction credits.

IX. CLEAN PORTION OF NON-ATTAINMENT AREA

No revisions to Sections IV.D.2.c. or IV.D.3.b. were made because the State Act provides for the exemption of Section IV.D.2.c. at C.R.S. 1973, 25-7-303.

STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE
REVISIONS TO REGULATION NO. 3, SECTION V.

These revisions to section V provide that the Air Pollution Control Division shall certify reductions in emissions below actual emissions levels at a given source, and that such reductions may be applied at other sources to meet requirements of the prevention of significant deterioration program, or to avoid causing a violation of the national ambient air quality standards. The purposes of these revisions are to provide the regulated community with a more flexible and efficient method for achieving compliance with certain air quality standards, and to effectuate a net improvement in air quality.

One of the fundamental tenets of these revisions is that any emissions reduction which is to be certified must constitute a reduction below actual emission levels, rather than merely below allowable levels. The Commission desired to limit the emissions trading program to those cases where a source has, in fact, reduced its emissions, rather than where it simply failed to reach its legally allowed maximum level of emissions.

In order to ensure that an improvement in air quality results from the implementation of these revisions, section V.D.6 provides that the amount of the reduction to be certified and available for future use shall be less than the actual amount by which emissions have been reduced. The rule thus ensures that there will be a net reduction in total emissions resulting from participation in the program established by these revisions.

The revisions also provide that a certified emissions reduction must be applied in some type of transaction within seven years. After that time the reduction becomes unavailable for such use, and effectively is applied towards improved air quality. This provision will ensure the prompt and efficient utilization of emissions reductions, and will also provide for further air quality improvement in those cases where a reduction is not utilized within the seven-year period.

The underlying principle of these revisions is that the marginal cost of control at individual points can vary widely, and that the creation of a system allowing sources to apply the most control where the marginal cost is lowest will create economic benefits. The rule creates three certified emissions reduction transactions which serve as vehicles for creating such benefits and which also ensure improved air quality. In bubble transactions, the owner or operator of a source containing two or more facilities may request a SIP revision to reallocate the total allowable emissions from the two facilities. The allowable emissions may be increased in one facility and decreased at another, provided that the total remains the same or is less. Offset transactions allow the use of a certified emissions reduction at one source to achieve compliance with PSD or NAAQS requirements at another source. Finally, in netting transactions, the owner or operator of a new facility may avoid certain new source performance review requirements through use of a certified emissions reduction created at another facility within the source. Such review may be avoided if the difference between the amount of the

certified emissions reduction and the amount of the new pollutants to be emitted from the new facility does not constitute a significant increase of pollutants.

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EFFECTIVE: March 30, 1985

STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE
FOR REVISIONS TO REGULATION NO. 3 SECTION II.C.1

The specific statutory authority under which the Commission shall hold and conduct this hearing is prescribed by 24-4-103, 25-7-105, -106, -110, and the hearing will be conducted in accord with provisions of 24-4-103 and 25-7-110, C.R.S. 1982 and the Procedural Rules.

The revision to Regulation No. 3 Section II. C. 1. is an addition to the list of sources which are exempt from filing Air Pollution Emission notices. Addition of part 1. (small L) to this regulation exempts petroleum industry flares, approved by the Oil and Gas Conservation Commission, from having to file an Air Pollution Emission Notice (APEN) if emissions of any pollutant do not exceed five (5) tons per year. This exemption only applies to flares which which do not combust gas containing hydrogen sulfide (H_2S) except in trace amounts, since H_2S is classified as a hazardous air pollutant. Previously APENS were required for these flares when emissions exceeded 1 ton per year.

The Air Quality Control Commission adopts this change for the following reasons: 1) records of the amount of gas flared will be kept by the Oil and Gas Commission and made available to the Division; 2) the flaring is a temporary activity in most cases; 3) Statewide emissions from flares are relatively low, with nitrogen oxides (NO_X) being the main pollutant emitted (emissions of NO_X from flares is approximately 200 tons per year statewide, while total stationary source No_X emissions are over 160,000 tons per year in Colorado); 4) ambient impacts from flares are low; 5) No hazardous pollutants will be emitted; 6) larger flares will still have to be permitted by the Division.

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ADOPTED: March 19, 1987

application.

(b) The division shall evaluate permit applications to determine whether operation of the proposed new source at the date of start-up will comply with all applicable emission control regulations, regulations for the control of hazardous pollutants, and requirements of part 2 or 3 of this article and, where no national ambient air quality standard has been established for a pollutant, the applicable state regulation or ambient air quality standard for such pollutant.

(c) The division shall also determine whether applications are for a new source activity that may have an impact upon areas which, as of the projected new source start-up date, are in compliance with national ambient air quality standards as of the date of the permit application, or for new source activity that may have an impact upon areas which, as of the projected new source start-up date, are not in compliance with national ambient air quality standards as of the date of the permit application.

(d) The division shall prepare its preliminary analysis regarding compliance, as set forth in paragraph (b) of this subsection (4), and regarding the impact on attainment or nonattainment areas, as set forth in paragraph (c) of this subsection (4), as expeditiously as possible, but no later than sixty calendar days after receipt of a completed permit application. Applicants must be advised within twenty calendar days after receipt of any application, or supplement thereto, if and in what respects the subject application is incomplete. Upon failure of the division to so notify the applicant within twenty calendar days of its filing, the application shall be deemed complete.

(e) For those types of projects or activities defined or designated by the commission as warranting public comment with respect thereto, the division shall, within fifteen calendar days after it has prepared its preliminary analysis, give public notice of the proposed project or activity by at least one publication in a newspaper of general distribution in the area in which the proposed project or activity, or a part thereof, is to be located. The division shall also during such period of time maintain in the office of the county clerk and recorder of the county in which the proposed project or activity, or a part thereof, is located a copy of its preliminary analysis and a copy of the application with all accompanying data for public inspection. The division shall receive and consider public comment thereon for a period of thirty calendar days thereafter.

(f) (I) For any application subject to the requirements for prevention of significant deterioration as provided in part 2 of this article, within fifteen calendar days after the issuance of its preliminary analysis, the division shall:

(A) Forward to the applicant written notice of the applicant's right to a formal hearing before the commission with respect to the application; and

(B) Give public notice of the proposed source or modification and the division's preliminary analysis thereof by at least one publication in a newspaper of general distribution in the area of the proposed source or modification. Such notice shall advise of the opportunity for a public hearing for interested persons to appear and submit written or oral comments to the commission on the air quality impacts of the source or modification, the alternatives to the source or modification, the control technology required, and other appropriate considerations. The division shall receive and consider any written comments submitted.

(II) If within thirty calendar days of publication of such public notice the applicant or an interested person submits a written request for a public hearing to the division, the division shall transmit such request to the commission along with the application, the division's preliminary analysis, and any written comments received by the division, within five calendar days of the end of such thirty-day period. The commission shall, within sixty calendar days after receipt of the application, comments, and analysis, hold a public hearing to elicit and record the comment of any interested person regarding the sufficiency of the preliminary analysis and whether the permit application should be approved or denied. At least thirty calendar days prior to such public hearing, notice thereof shall be mailed by the commission to the applicant, printed in a newspaper of general distribution in the area of the proposed source or modification, and submitted for public review with the county clerk and recorder of the county wherein the project or activity is proposed.

(g) (I) Within thirty calendar days following the completion of the division's preliminary analysis for applications not subject to paragraph (e) or (f) of this subsection (4), or within thirty calendar days following the period for public comment provided for in paragraph (e) of this subsection (4), or within thirty calendar days following the period for public notice or the opportunity for hearing provided for in paragraph (f) of this subsection (4) or, if a hearing is held, within thirty calendar days following such hearing, the division or the commission, as

the case may be, shall grant the permit application if it finds that:

(A) The proposed source or activity will meet all applicable emission control regulations and regulations for the control of hazardous air pollutants contained in the state implementation plan;

(B) The proposed source or activity will meet the requirements of part 2 or 3 of this article, if applicable; and

(C) Where no national ambient air quality standard has been established for a particular pollutant, the proposed source or activity will meet all applicable regulations and will not interfere with attainment and maintenance of any applicable state ambient air quality standard.

(II) For purposes of this paragraph (g), such thirty-day period shall not be extended by continuing the hearing without the express consent of the applicant for the permit or keeping the record open past the last day of the public hearing.

(III) The division or the commission, as the case may be, shall include such terms and conditions in any permit as it deems necessary for the proposed project or activity to qualify for a permit; except that the only terms or conditions of a permit which may be enforced after final approval has been granted pursuant to paragraph (j) of this subsection (4) are those specifically described in this paragraph (g) as conditions required to be found for the granting of a permit application. All other terms and conditions of the permit shall terminate upon the granting of final approval by the division pursuant to paragraph (j) of this subsection (4). If the division or the commission, as the case may be, fails to grant or deny the permit application within the time prescribed, the permit shall be deemed to have been granted unless the applicant therefor shall have expressly waived such time limitation; except that, for sources which must meet the requirements of part 2 or 3 of this article, the division or the commission shall not be required to grant or deny any permit or portion thereof until the date specified for the grant or denial of a permit pursuant to part 2 or 3 of this article, whichever is later.

(h) If the division denies a permit or imposes conditions upon the issuance of a permit which are contested by the applicant or if the division revokes a permit pursuant to paragraph (j) of this subsection (4), the applicant may request a hearing before the commission. The hearing shall be held in accordance

with section 24-4-105, C.R.S. The commission may, after review of the evidence presented at the hearing, affirm, reverse, or modify the decision of the division but shall, in any event, assure that all the requirements of paragraphs (f) and (g) of this subsection (4) are met.

(i) An order of the division or commission shall be final upon issuance.

(j) No person shall commence the operation of any project or the conduct of any activity for which a permit has been issued without giving at least thirty calendar days' prior notice to the division of the date on which such commencement is to take place. Within thirty days after commencement, the division shall inspect the project or activity to determine whether or not the terms and conditions of the permit have been properly satisfied. If at any time prior to final approval the division finds that the terms or conditions of the permit have been violated, it may revoke the permit, or it may grant a period of not more than six months in which the terms or conditions may be satisfied; except that no requirements of the state implementation plan may be violated during such period. If the division determines that the terms and conditions of the permit have not been satisfied within such period of time, the division shall revoke the permit. If the division determines that the terms and conditions of the permit have been satisfied, the division shall grant its final approval of the permit whereupon all requirements of this subsection (4) shall have been fulfilled by the applicant. Enforcement of a permit condition shall occur only under section 25-7-115, and no permit issued pursuant to this article shall be subject to revocation after final approval has been given pursuant to this paragraph (j).

(k) Any permit issued prior to June 20, 1979, with respect to a project or the operation thereof shall continue in full force and effect and, on and after June 20, 1979, shall not be affected by the terms of this section, and the holder of such a permit shall not be required to comply with the provisions of this section. Regulations concerning permits for the construction and operation of new direct air pollution sources in effect as of July 1, 1973, and not inconsistent with the provisions of this article shall continue in effect until repealed or amended from time to time by the commission.

(5) (a) The commission shall designate by regulations those classes of minor or insignificant sources of air pollution which are exempt from the requirement for a permit because of their negligible impact upon air quality. Any person required by

the commission to file an air pollutant emission notice with the division shall pay a nonrefundable fee of forty dollars; except that the commission may designate those activities or classes of sources which shall be exempt from the payment of such fee. The commission shall also establish and, as necessary, revise nonrefundable fees for the processing of applications or the issuance of permits under subsection (4) of this section sufficient to cover the reasonable costs of such processing, administration, and enforcement, but in no event shall a fee exceed twenty-five thousand dollars for any and all permits required for an entire contiguous plant site. In establishing such fees, the commission shall provide a higher per hour charge for permits which require five hours or more than for permits which require less than five hours to process.

(b) A single fee shall be charged to any applicant for any indirect source plan or plans submitted to the division at any one time. A permit shall be deemed to run with the land, and a new permit and additional permit fees may be required only when, in the judgment of the commission, plans for the indirect source have been substantially changed. The moneys collected under this subsection (5) and in section 25-7-403 shall be remitted to the state treasurer, who shall credit the same to the stationary sources control fund, which fund is hereby created. From such fund the general assembly shall appropriate to the department of health, at least annually, only such moneys as may be necessary to cover the division's costs of processing, administration, and enforcement described in this subsection (5), and to cover the division's costs of developing and maintaining an evaluation and certification program for the control of air pollution caused by wood stove emissions and of developing and maintaining a fireplace design program for the control of air pollution caused by fireplace emissions. Any moneys not appropriated by the general assembly shall be retained in the stationary sources control fund and shall not revert to the general fund at the end of any fiscal year.

25-7-115. Enforcement. (1) The division shall enforce compliance with the emission control regulations of the commission, the requirements of the state implementation plan, and the provisions of this article.

(2) If a written and verified complaint is filed with the division alleging that, or if the division itself has cause to believe that, any person is violating or failing to comply with any regulation of the commission, order issued pursuant to section 25-7-118, requirement of the state implementation plan, provision of this article, or term or condition of a permit

required pursuant to part 2 or 3 of this article, the division shall cause a prompt investigation to be made; and, if the division investigation determines that any such violation or failure to comply exists, the division shall send written notice to the owner or operator of such air pollution source within thirty days after the discovery of the alleged violation or noncompliance or within such other period as is expressly required or authorized by law. Such notice shall specify the provision alleged to have been violated or not complied with and the facts alleged to constitute the violation or noncompliance.

(3) (a) Within thirty calendar days after notice has been given, the division shall confer with the owner or operator of the source to determine whether a violation or noncompliance did or did not occur and, if such violation or noncompliance occurred, whether a noncompliance penalty must be assessed under subsection (5) of this section. The division shall provide an opportunity to the owner or operator at such conference, and may provide further opportunity thereafter, to submit data, views, and arguments concerning the alleged violation or noncompliance or the assessment of any noncompliance penalty.

(b) If, after any such conference, a violation or noncompliance is determined to have occurred, the division shall issue an order requiring the owner or operator or any other responsible person to comply, unless the owner or operator demonstrates that such violation occurred during a period of start-up, shutdown, or malfunction. Such order may also require the calculation of a noncompliance penalty under subsection (5) of this section. Unless enforcement of its order has been stayed as provided in paragraph (b) of subsection (4) of this section, the division may seek enforcement, pursuant to section 25-7-121 or 25-7-122, of the applicable regulation of the commission, order issued pursuant to section 25-7-118, requirement of the state implementation plan, provision of this article, or terms or conditions of a permit required pursuant to section 25-7-114 (4) (g) in the district court for the district where the affected air pollution source is located. The court shall issue an appropriate order, which may include a schedule for compliance by the owner or operator of the source.

(c) The order for compliance shall set forth with specificity the final determinations of the division regarding the nature and extent of violation or noncompliance by the named persons and facilities and shall also include, by reference, a summary of the proceedings at the conference held after the notice of violation and an evaluation of the evidence considered by the division in reaching its final determinations.

state implementation plan should be implemented with respect to such violation or noncompliance.

(III) Whether the owner or operator is subject to noncompliance penalties under subsection (5) of this section.

(b) Except with respect to actions taken pursuant to section 25-7-112 or 25-7-113, upon the filing of such petition, the order and the provisions of the state implementation plan which relate to the alleged violation or noncompliance shall be stayed pending determination of the petition by the commission. Any stay pursuant to this paragraph (b) shall be effective only as to the specific source covered by the order and such petition.

(5) (a) (I) Any order issued pursuant to subsection (3) of this section which pertains to an alleged violation described in section 120(a)(2)(A) of the federal act shall also require each person who is subject to such order, within forty-five calendar days after the issuance of such order, to calculate the penalty owed in accordance with paragraph (b) of this subsection (5) and submit the calculation, together with a payment schedule and all information necessary for an independent verification thereof, to the division. If the order has been stayed pursuant to subsection (4) of this section, the penalty calculation shall be submitted by the owner or operator to the division within forty-five calendar days after issuance of a final determination of the commission that:

(A) A violation or noncompliance occurred;

(B) If a revision to the state implementation plan has been requested, that all or part of such request should be denied; except that if only part of such request is denied, the penalty calculation shall not be submitted for any aspect of the violation or noncompliance which is excused by reason of approval of a requested revision of the state implementation plan.

(C) The violation is one described in section 120(a)(2)(A)

of the federal act; and

(D) If an exemption pursuant to subsection (7) of this section has been claimed, that the owner or operator is not entitled thereto.

(II) The division shall review the penalty calculation and schedule submitted pursuant to subparagraph (I) of this paragraph (a) and shall issue an order assessing the noncompliance penalty and providing a payment schedule therefor.

(b) (I) The amount of the penalty which shall be assessed under this subsection (5) shall be equal to:

(A) The amount, determined in accordance with section 120 of the federal act and rules and regulations promulgated under said act by the United States environmental protection agency, which shall be no less than the sum of the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period of not longer than ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional value which a delay in compliance beyond July 1, 1979, may have for the owner or operator of such stationary source; less

(B) The amount of any expenditure made by the owner or operator of such stationary source during any such quarter for the purpose of bringing the source into, and maintaining compliance with, such requirement to the extent that such expenditure has not been taken into account in the calculation of the penalty under sub-subparagraph (A) of this subparagraph (I).

(II) To the extent that any expenditure under sub-subparagraph (B) of subparagraph (I) of this paragraph (b) made during any quarter is not subtracted for such quarter from the costs under sub-subparagraph (A) of subparagraph (I) of this paragraph (b), such expenditure may be subtracted for any subsequent quarter from such costs; except that in no event shall the amount paid be less than the quarterly payment minus the amount attributed to the actual cost of construction.

(c) Any penalty assessed pursuant to subsections (5) to (11) of this section shall be paid in equal quarterly installments (except as provided in sub-subparagraph (B) of subparagraph (I) of paragraph (b) of this subsection (5)) for the period which begins either August 7, 1979, if notice pursuant to subsection (2) of this section is issued on or before such date or which begins on the date of issuance of notice pursuant to subsection

(2) of this section if such notice is issued after August 7, 1979, and which period ends on the date on which such stationary source is estimated to come into compliance.

(d) Any person who fails to pay the amount of any penalty with respect to any stationary source under this subsection (5) on a timely basis shall be required to pay, in addition, a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such stationary source which are unpaid as of the beginning of such quarter.

(6) Within twenty calendar days after issuance of an order under subparagraph (II) of paragraph (a) of subsection (5) of this section, the owner or operator may file with the commission a written petition requesting a hearing to review such order. Within sixty calendar days after the filing of such petition, the commission shall hold a hearing and issue a decision thereon.

(7) (a) The owner or operator of any stationary source shall be exempt from the duty to pay a noncompliance penalty pursuant to this section if after notice the owner or operator demonstrates at a hearing that the failure of such stationary source to comply is due solely to:

(I) The conversion by such stationary source from the burning of petroleum products or natural gas, or both, as the primary energy source to the burning of coal pursuant to an order under section 119 of the federal act;

(II) In the case of a coal-burning source granted an extension under section 119 of the federal act, a prohibition from using petroleum products or natural gas, or both, by reason of an order under the provisions of section 2 (a) and (b) of the federal "Energy Supply and Environmental Coordination Act of 1974" or under any legislation which amends or supersedes those provisions;

(III) The use of innovative technology sanctioned by an enforcement order under section 113 (d) (4) of the federal act;

(IV) An inability to comply with such requirements for which the stationary source has received an order pursuant to section 25-7-118, which inability results from reasons entirely beyond the control of the owner or operator of such stationary source or of any entity controlling, controlled by, or under com-

mon control with the owner or operator of such stationary source; or

(V) The conditions by reason of which a temporary emergency suspension is authorized under section 110 (f) or (g) of the federal act;

(b) The division may, after notice and opportunity for a public hearing, exempt any stationary source from the duty to pay a noncompliance penalty pursuant to this section with respect to a particular instance of noncompliance if it finds that such instance of noncompliance is inconsequential in nature and duration. Any instance of noncompliance occurring during a period of start-up, shutdown, or malfunction shall be deemed to be inconsequential. If a public hearing is requested by an interested person, the request shall be transmitted to the commission within twenty calendar days of its receipt by the division. The commission shall, within sixty calendar days of its receipt of the request, hold a public hearing with respect thereto and within thirty calendar days of such hearing issue its decision.

(c) An exemption under this subsection (7) shall cease to be effective if the stationary source fails to comply with the interim emission control requirements or schedules of compliance, including increments of progress, under any such extension, order, or suspension.

(8) If the owner or operator of a stationary source who receives an order pursuant to subsection (5) of this section fails to submit a calculation of the penalty, a schedule for payment, and the information necessary for an independent verification thereof, the division may enter into a contract with a person who has no financial interest in the ownership or operation of the stationary source or in any person controlling, controlled by, or under common control with such stationary source to assist in determining the penalty assessment or payment schedule with respect to such stationary source. The cost of such contract may be added to the penalty to be assessed against the owner or operator of such stationary source.

(9) (a) The division or the commission may adjust the amount of the penalty assessment or the payment schedule proposed by the owner or operator if the administrator of the United States environmental protection agency determines that the penalty or schedule does not meet the requirements of the federal act.

(b) Upon making a determination that a stationary source

which is subject to a penalty assessment pursuant to this section is in compliance, the division shall review the actual expenditures made by the owner or operator of such stationary source for the purpose of attaining and maintaining compliance and, within one hundred eighty days after such stationary source comes into compliance, shall either provide reimbursement with interest at appropriate prevailing rates for any overpayment by such person or assess and collect any additional payment with interest at prevailing rates for any underpayment by such person.

(10) Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other orders, payments, sanctions, or other requirements of this article.

(11) The division or the commission may request the district attorney for the district in which the alleged violation or noncompliance, or any part thereof, occurred or may request the attorney general to bring, and if so requested it is his duty to bring, a suit for recovery of any penalty or nonpayment penalty, with interest, imposed pursuant to subsection (5) of this section if the penalty is not paid when due.

25-7-116. Air quality hearings board.

Repealed, L. 84, p. 768, 1, effective July 1, 1984.

25-7-117. State implementation plan - revisions of limited applicability. (1) The commission, upon application by the owner or operator of a stationary source or as provided in section 25-7-110 (2), may revise the state implementation plan or any regulation or standard which is not part of the state implementation plan pursuant to this section if it determines that:

(a) Control techniques are not available, compliance with applicable emission control regulations would cause an unreasonable economic burden, or compliance with applicable emission control regulations would result in an arbitrary and unreasonable taking of property;

(b) The adoption of such revision would be consistent with, and aid in, implementing the legislative policy set forth in section 25-7-102; and

(c) In any event, adoption of such revision would be consistent with the requirements of section 110 of the federal act.

(2) Any revision of the state implementation plan or of a

(3) Any proceeding for judicial review of any final order or determination of the division or the commission shall be filed in the district court for the district in which is located the air pollution source affected.

25-7-121. Injunctions. (1) In the event any person fails to comply with a final order of the division or the commission that is not subject to stay pending administrative review, or in the event any person constructs, modifies, or commences operation of an air pollution source in violation of section 25-7-114 (4), the division or the commission, as the case may be, may request the district attorney for the district in which the alleged violation occurs or the attorney general to bring, and if so requested it is his duty to bring, a suit for an injunction to prevent any further or continued violation of such order or of section 25-7-114 (4).

(2) In any proceedings brought pursuant to this section to enforce an order of the division or the commission, a temporary restraining order or preliminary injunction, if sought, shall not issue if there is probable cause to believe that granting such temporary restraining order or preliminary injunction will cause serious harm to the affected person or any other person and:

(a) That the alleged violation or activity to which the order pertains will not continue; or

(b) That granting such temporary restraining order or preliminary injunction would be without sufficient corresponding public benefit.

25-7-122. Civil penalties. (1) Penalties shall be determined and collected by the district court for the district in which is located the air pollution source affected upon action instituted by the division for the determination and collection of said penalty under this section and in accordance with the following provisions:

(a) Any person who violates any final order of the division or commission issued pursuant to this article and not subject to a stay pending administrative review shall be subject to a civil penalty of not more than twenty-five thousand dollars per day of violation.

(b) Any person who violates the requirements of section 25-7-114 (4) regarding construction, modification, or commencement of operation of an air pollution source without a permit from the division or the commission and who operates or commences

operation of an air pollution source without such a permit shall be subject to a civil penalty of not more than twenty-five thousand dollars per day for each day of operation after receipt of the notice of noncompliance or violation.

(c) Any person failing to comply with the provisions of section 25-7-114 (1) shall be subject to a civil penalty of not more than one hundred dollars.

(2) In determining the amount of any civil penalty to be assessed pursuant to paragraphs (a) and (b) of subsection (1) of this section, the court shall take into account: The size of the business, the economic impact of the penalty on the business, the seriousness of the violation, and other relevant factors. The court shall also consider whether the violation was due to malfeasance or nonfeasance and the reason for the request for administrative or judicial review of the determination and, in such consideration, shall take into account whether the legal or factual issues raised were frivolous or raised primarily for the purpose of delay.

25-7-123. Incinerator and open burning - penalties. (1) (a) The commission shall adopt a program to control incinerator burning and open burning in each portion of the state in which such control is necessary in order to carry out the policies of this article, as set forth in section 25-7-102, and to comply with the requirements of the federal act. Such program shall include emission control regulations and the designation, after public hearing and from time to time, of such portions by legal description.

(b) Open burning in the course of agricultural operations may be regulated only where the absence of regulations would substantially impede the commission in carrying out the objectives of this article. In adopting any program applicable to agricultural operations, the commission shall take into consideration the necessity of conducting open burning.

(2) (a) Within such designated portions of the state, no person shall burn or permit to be burned in any incinerator, or on any open premises owned or controlled by him, or on any public street, alley, or other land adjacent to such premises any rubbish, wastepaper, wood, or other flammable material, unless a permit therefor has first been obtained from the division. In granting or denying the issuance of any such permit, the division shall base its action on the location and proximity of such burning to any building or other structure, the potential contribution of such burning to air pollution in the area, climatic con-

(c) From time to time, whenever appropriate, the governor, in cooperation with his department heads, shall develop or modify such plans as will be necessary or appropriate to control and abate the air pollution conditions most likely to require the exercise of the powers granted in paragraph (b) of this subsection (2).

25-7-113. Air pollution emergencies endangering public welfare anywhere in this state. (1) Whenever the division determines, after investigation, that any person is either engaging in any activity involving a significant risk of air pollution or is discharging or causing to be discharged into the atmosphere, directly or indirectly, any air pollutants and such activity or discharge does not constitute a clear, present, and immediate danger to the health of the public, but is of such a nature as to cause extreme discomfort or that it is an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive, the division shall:

(a) Issue a written cease and desist order to said person requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere, and, upon receipt of such order, such person shall immediately discontinue such activity or discharge; or

(b) Apply to any district court of this state for the district in which the said activity or discharge is occurring for a temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure. Any such action in a district court shall be given precedence over all other matters pending in such district court. The institution of such injunction proceedings by the division shall confer upon said district court exclusive jurisdiction to determine finally the subject matter of the proceeding; or

(c) Both issue such a cease and desist order and apply for any such restraining order or injunction.

25-7-114. Air pollutant emission notices and emission permits. (1) No person shall permit emission of air pollutants from, or construction or alteration of, any facility, process, or activity except residential structures from which air pollutants are, or are to be, emitted unless and until an air pollutant emission notice has been filed with the division with respect to such emission. A revised emission notice shall be filed whenever a significant change in emissions is anticipated or has occurred. The commission shall exempt those sources or categories of

sources which it determines to be of minor significance from the requirement that an air pollutant emission notice be filed.

(2) Each such notice shall specify the location at which the proposed emission will occur, the name and address of the person operating or owning such facility, process, or activity, the nature of such facility, process, or activity, and an estimate of the quantity and composition of the expected emission. The division shall make available at all air pollution control authority offices appropriate forms on which the information required by this section shall be furnished.

(3) If the information required by subsection (1) of this section is on file with the division on or after April 10, 1970, such information shall be deemed to constitute compliance with the requirements of said subsection (1) as to the emission covered thereby.

(4) No person shall construct or substantially alter any building, facility, structure, or installation, except single-family residential dwellings, or install any machine, equipment, or other device, or commence the conduct of any such activity, or commence performance of any combinations thereof, or commence operations of any of the same which will or do constitute a new stationary source or a new indirect air pollution source without first obtaining or having a valid permit therefor from the division or commission, as the case may be; except that no permit shall be required for new indirect air pollution sources until regulations regarding permits for such sources have been promulgated by the commission. The commission shall establish rules, regulations, and procedures in accordance with the provisions of this article for the granting or denial of permits which shall be in conformity with the purposes of this article, as set forth in section 25-7-102; but in no event shall regulations governing indirect air pollution sources be more stringent than those required for compliance with the federal act and final rules and regulations adopted pursuant thereto. Such procedures shall include, but not be limited to, the following:

(a) Any such person shall file an application for a permit with the division, which may include such relevant plans, specifications, air quality data, and other information as the division may reasonably require. Prior to submitting an application for a permit, the applicant may request and, if so requested, the division shall grant a planning meeting with the applicant. At such meeting, the division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and data required to be furnished with the permit