

**CLARK COUNTY BOARD OF COMMISSIONERS
AGENDA ITEM**

Issue: Ordinance to Amend Clark County Air Quality Regulations Sections 0 and 25; Adopt Sections 12.2, 12.3, 12.4 and 12.5; Repeal Existing Sections 16, 19 and 55 and Portions of Ordinance No. 3349	Back-up: <p style="text-align: center;">AIDR #3263</p>
Petitioner: Lewis Wallenmeyer, Director, Air Quality & Environmental Management	Clerk Ref. #
Recommendation: <p>That the Board of County Commissioners conduct a public hearing, approve, adopt and authorize the Chairman to sign an ordinance to repeal Clark County Air Quality Regulations Sections 16, 19, 55 and certain sections of Clark County Ordinance No. 3349 and, in their place, adopt new Clark County Air Quality Regulations Sections 12.2, 12.3, 12.4, and 12.5 to provide for and update procedures for permitting of major stationary sources; amend Section 0 to ensure consistency of terms throughout the Air Quality Regulations; amend Section 25 by deleting the current version and adopting a new section to allow for affirmative defenses for excess emissions due to malfunctions, startup, or shutdown in certain circumstances; providing for other matters related thereto; consider and approve responses made to written comments provided during the public comment period; authorize the Director or his designee to make a record of comments and responses made and accepted by the Board at the public hearing; and authorize the Director or his designee to compile, finalize, and, with the exception of Section 12.5, submit the approved ordinance and all related documentation in accordance with AQR Section 2 to the Nevada Division of Environmental Protection for the United States Environmental Protection Agency's approval into or removal from the Nevada State Implementation Plan.</p>	

FISCAL IMPACT:

None by this action.

BACKGROUND:

The proposed changes to the Clark County Air Quality Regulations (AQRs) are part of the ongoing Regulation Improvement Project that started in 2005. The project's objectives are to update and revise the AQRs to make them easier to understand and use, remove obsolete sections and delete requirements that are inconsistent with federal law or that are no longer necessary for attainment or maintenance of air quality standards in Clark County.

ADOPTED ORDINANCE NO. 3863 AS RECOMMENDED (SEE ITEM NO. 72 FOR MOTION AND VOTE)

Cleared for Agenda
5/18/10 Du
 Agenda Item #
73

Section 0 is the definition section of the AQRs. The attached ordinance will revise the definitions of "Permanent" and "Surplus" to ensure that the definitions are the same throughout the AQRs.

Sections 12.2, 12.3, 12.4, and 12.5 will define the application, review and analysis, control technology, and public notice requirements for major stationary sources of air pollution that are required to construct and operate under a federally enforceable permit reviewed and issued by the Department of Air Quality and Environmental Management (DAQEM). The proposed Sections will replace the existing Sections 12, 16, 19, and 55 which have either been previously repealed as part of Ordinance # 3349 or are proposed for repeal as part of this rulemaking. Ordinance # 3349, adopted by the Board of County Commissioners on January 3, 2006, included changes to definitions in Section 0 of the AQRs and the repeal of AQR Sections 12, 58 and 59 currently in effect. Ordinance # 3349 also included the adoption of two major source permitting rules, AQR Sections 12.2 and 12.3. The effective date of these actions has been extended by Board action a number of times since the original adoption of Ordinance # 3349, in order to allow time for the development of the rules that are the subject of this agenda item. Since the action proposed as part of this agenda item includes revised definitions and revised AQR Sections 12.2 and 12.3, which will replace those adopted as part of Ordinance # 3349, this ordinance will repeal those portions of Ordinance # 3349 that are no longer necessary. Specifically, this ordinance will repeal Sections 1, 2, 6 and 7 of Ordinance # 3349 and will also replace the repealed permitting rules with those proposed as part of this agenda item with an effective date of July 1, 2010.

Section 25 defines the procedures and timing for notifying DAQEM of an event where an emission limitation is exceeded and the circumstances where an affirmative defense may be provided for excess emissions occurring during malfunction, startup or shutdown events. The proposed Section 25 will replace the existing Section 25.

The attached AIDR No. ~~3263~~ provides a detailed explanation of the purpose and intent of this ordinance and includes responses to comments made during the public comment period, which was conducted from March 17, 2010 through April 16, 2010. This public hearing has been properly noticed in accordance with NRS Chapters 244 and 445B.

Staff recommends that the Board adopt this ordinance and authorize staff to take all necessary steps to amend the Nevada State Implementation Plan in accordance with the changes to the AQRs made by this ordinance.

Respectfully submitted,



LEWIS WALLENMAYER, DIRECTOR
Air Quality & Environmental Management

[Bracketed] and/or ~~striketrough~~ material is that portion being deleted
Underlined material is that portion being added

BILL NO. 5-4-10-5

SUMMARY – An Ordinance to repeal certain sections of Ordinance No. 3349 and Clark County Air Quality Regulations Sections 16, 19, and 55, adopt new Sections 12.2, 12.3, 12.4, and 12.5 to update major stationary source permitting requirements, and amend Section 25 regarding excess emissions and definitions adopted in Ordinance No. 3822.

ORDINANCE NO. 3863
(of Clark County, Nevada)

AN ORDINANCE TO REPEAL CLARK COUNTY AIR QUALITY REGULATIONS SECTIONS 16, 19, 55, AND CERTAIN SECTIONS OF CLARK COUNTY ORDINANCE NO. 3349 AND IN THEIR PLACE ADOPT NEW SECTIONS 12.2, 12.3, 12.4, AND 12.5 TO ADOPT, UPDATE AND CLARIFY MAJOR STATIONARY SOURCE PERMITTING REQUIREMENTS FOR REGULATED AIR POLLUTANTS IN ATTAINMENT AND NONATTAINMENT AREAS OF CLARK COUNTY, AMEND SECTION 0 DEFINITIONS ADOPTED IN ORDINANCE NO. 3822, AND AMEND SECTION 25 BY DELETING THE CURRENT VERSION AND ADOPTING A NEW SECTION TO ALLOW FOR AFFIRMATIVE DEFENSES FOR EXCESS EMISSIONS DUE TO MALFUNCTIONS, STARTUP, AND SHUTDOWN IN CERTAIN CIRCUMSTANCES; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Clark County Air Quality Regulation Section 16 – Operating Permits is repealed in its entirety.

SECTION 2. Clark County Air Quality Regulation Section 19 – Part 70 Operating Permits is repealed in its entirety.

SECTION 3. Clark County Air Quality Regulation Section 55 – Preconstruction Review for New and Modified Stationary Sources in the 8-Hour Ozone Nonattainment Area is repealed in its entirety.

SECTION 4. Sections 1, 2, 6, and 7 of Clark County Ordinance No. 3349, passed January 3, 2006, are repealed in their entirety.

SECTION 5. A new Clark County Air Quality Regulation Section 12.2 – Permit Requirements for Major Sources in Attainment Areas is adopted as reflected in Exhibit 1, attached hereto.

SECTION 6. A new Clark County Air Quality Regulation Section 12.3 – Permit Requirements for Major Sources in Nonattainment Areas is adopted as reflected in Exhibit 2, attached hereto.

SECTION 7. A new Clark County Air Quality Regulation Section 12.4 – Authority to Construct Application and Permit Requirements for Major Part 70 Sources is adopted as reflected in Exhibit 3, attached hereto.

SECTION 8. A new Clark County Air Quality Regulation, Section 12.5 – Part 70 Operating Permit Requirements is adopted as reflected in Exhibit 4, attached hereto.

SECTION 9. Clark County Air Quality Regulation Section 0 – Definitions, amended in Section 1 of Clark County Ordinance No. 3822, passed November 3, 2009, is amended as follows:

- (a) “Permanent” means an emission reduction which is federally enforceable for the life of a corresponding increase in emissions. For federal ~~e~~ Emission ~~r~~ Reduction ~~e~~ Credits (ERCs), emission reductions for a stationary source are permanent if the reductions are federally enforceable and the reductions occur over the duration of the ERC rule ~~and for as long as they are relied upon in a Clark County SIP.~~

(b) "Surplus" means an emission reduction that has not been relied on in any air quality program related to any ~~Clark County State Implementation Plan (SIP)~~, that is not a ~~Clark County Nevada~~ SIP requirement, that is not a requirement of a ~~State~~ air quality program that has been adopted but is not in a Clark County the Nevada SIP, is not credited in any federal reasonable further progress or other milestone demonstration, is not a requirement of a consent decree, is not a requirement of a federal rule that focuses on reducing criteria air pollutants or their precursors, and has not already been credited in any other air quality program. The purpose of requiring that emissions offsets be surplus is to prohibit ~~Double-counting of an emission is prohibited~~ emission reductions.

SECTION 10. Clark County Air Quality Regulation Section 25 –

Upset/Breakdown, Malfunctions is deleted in its entirety and a new Section 25 – Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown is adopted as reflected in Exhibit 5, attached hereto.

SECTION 11. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 12. All ordinances, parts of ordinances, chapters, sections, subsections, clauses phrases, or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

////

////

////

////

////

////

////

SECTION 13. This ordinance shall take effect and be in force on July 1, 2010, after its passage and the publication thereof by title only, together with the names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on the 4th day of May, 2010.

PROPOSED BY: Commissioner Rory Reid

PASSED on the 18th day of May 2010.

AYES: Susan Brager

Lawrence L. Brown III

Tom Collins

Chris Giunchigliani

Rory Reid

Steve Sisolak

Lawrence Weekly

////

////

////

////

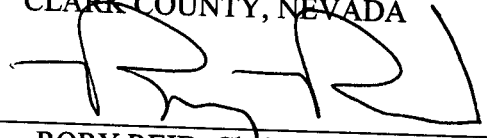
////

NAYS: None

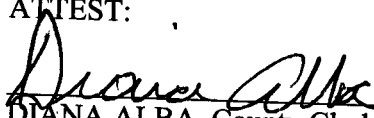
ABSTAINING: None

ABSENT: None

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: 
RORY REID, Chairman

ATTEST:


DIANA ALBA, County Clerk

This ordinance shall be in force and effect from and after
the 1st day of July, 2010.

SECTION 12.2: PERMIT REQUIREMENTS FOR MAJOR SOURCES IN ATTAINMENT AREAS
(PREVENTION OF SIGNIFICANT DETERIORATION)

12.2	Prevention of Significant Deterioration in Attainment Areas.....	1
12.2.1	Applicability Procedures.....	1
12.2.1.1	Preconstruction Review Requirements.....	1
12.2.1.2	Construction of Major Stationary Sources or Modifications	1
12.2.1.3	Authority to Construct Permit Requirement	1
12.2.1.4	Projects	1
12.2.1.5	Major Sources with Plantwide Applicability Limitations....	2
12.2.1.6	Existing Emission Unit Projects	2
12.2.1.7	Availability of Information.....	4
12.2.1.8	Secondary Emissions	4
12.2.2	Definitions	4
12.2.3	Ambient Air Increments.....	26
12.2.4	Ambient Air Ceilings.....	26
12.2.5	Restrictions On Area Classifications	27
12.2.5.1	Class I Areas	27
12.2.5.2	Redesignation of Class I Areas	27
12.2.5.3	Class II Areas	27
12.2.5.4	Redesignating Areas	27
12.2.5.5	Exclusions from Increment Consumption	27
12.2.6	Redesignation.....	29
12.2.6.1	Clark County.....	29
12.2.6.2	Requirements	29
12.2.6.3	Reserved	31
12.2.6.4	Administrator Approval	31
12.2.6.5	Resubmitting Disapproved Proposal	31
12.2.7	Stack Heights.....	31
12.2.7.1	Emission Limitation.....	31
12.2.7.2	Time Frame	31
12.2.7.3	Stack Height Limitation.....	31
12.2.8	Exemptions	35
12.2.8.1	Nonattainment Areas	35
12.2.8.2	Class I Areas	35
12.2.8.3	Class II Areas	36
12.2.8.4	Threshold Limits	36
12.2.9	Control Technology Review	37
12.2.9.1	Major Stationary Sources	37
12.2.9.2	Major Modifications.....	37
12.2.9.3	Phased Construction Projects	37
12.2.10	Source Impact Analysis	37
12.2.10.1	Demonstration of Impact	37

	12.2.10.2	Violation of Standard	37
12.2.11		Air Quality Models.....	38
	12.2.11.1	Model Applicability.....	38
	12.2.11.2	Model Modifications and Substitutions	38
12.2.12		Air Quality Analysis	38
	12.2.12.1	Preapplication Analysis	38
	12.2.12.2	Post-Construction Monitoring	39
	12.2.12.3	Operations of Monitoring Stations	40
12.2.13		Source Information.....	40
	12.2.13.1	Required Information.....	40
	12.2.13.2	Information on Air Quality Impacts.....	40
12.2.14		Additional Impact Analyses.....	41
	12.2.14.1	Visibility, Soils, and Vegetation.....	41
	12.2.14.2	Commercial, Residential, Industrial, and Other Growth.....	41
12.2.15		Additional Requirements for Sources Impacting Class I Areas.....	41
	12.2.15.1	Notice to EPA.....	41
	12.2.15.2	Federal Land Manager	41
	12.2.15.3	Impact of Denial on Air Quality-Related Values.....	41
	12.2.15.4	Class I Variances.....	42
	12.2.15.5	Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence	42
	12.2.15.6	Variance by the Governor with the President's Concurrence	43
	12.2.15.7	Emission Limitations for Presidential or Gubernatorial Variance	43
12.2.16		Public Participation	44
	12.2.16.1	Notice of Proposed Action	44
	12.2.16.2	Distribution of Notice	45
	12.2.16.3	Public Hearings	46
	12.2.16.4	Time Frame	46
	12.2.16.5	Comments and Approvals	46
	12.2.16.6	Enhanced Public Participation Procedures.....	47
12.2.17		Source Obligation	47
	12.2.17.1	Enforcement.....	47
	12.2.17.2	Termination	47
	12.2.17.3	Compliance	47
	12.2.17.4	Relaxation in Enforceable Limitations.....	48
12.2.18		Innovative Control Technology	48
	12.2.18.1	Request for Approval.....	48
	12.2.18.2	Requirements for Approval.....	48
	12.2.18.3	Withdrawal of Approval.....	49
	12.2.18.4	BACT Extension for Failure or Withdrawal	49
12.2.19		Plantwide Applicability Limits (PALs)	49
	12.2.19.1	Applicability	49
	12.2.19.2	Definitions.....	50
	12.2.19.3	Permit Application Requirements	51

12.2.19.4	General Requirements for Establishing PALs	52
12.2.19.5	Public Participation Requirements for PALs	53
12.2.19.6	Setting the 10-year Actuals PAL Level	53
12.2.19.7	Contents of a Part 70 Operating Permit Containing a PAL	53
12.2.19.8	PAL Effective Period and Reopening of the PAL Conditions in a Part 70 Operating Permit	54
12.2.19.9	Expiration of a PAL	55
12.2.19.10	Renewal of a PAL	56
12.2.19.11	Increasing a PAL during the PAL Effective Period	58
12.2.19.12	Monitoring Requirements for PALs	59
12.2.19.13	Recordkeeping Requirements	62
12.2.19.14	Reporting and Notification Requirements	62
12.2.19.15	Transition Requirements	64
12.2.20	Invalidation	64

LIST OF TABLES

Table 12.2-1.	Increment Limits	26
Table 12.2-2.	Air Quality Impact Limits	36
Table 12.2-3.	Significance Levels	38
Table 12.2-4.	Maximum Allowable Pollutant Increases	42
Table 12.2-5.	Maximum Allowable Increase ($\mu\text{g}/\text{m}^3$)	43

12.2 Prevention of Significant Deterioration in Attainment Areas

12.2.1 Applicability Procedures

12.2.1.1 Preconstruction Review Requirements

The preconstruction review requirements of Section 12.2 shall apply to the construction of any new major stationary source, or any project at an existing major stationary source, within the limits set forth in Section 12.2.1.4, in an area designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the Act.

12.2.1.2 Construction of Major Stationary Sources or Modifications

The requirements of Sections 12.2.9 through 12.2.17 apply to the construction of any new major stationary source, or the major modification of any existing major stationary source, except as Section 12.2 otherwise provides.

12.2.1.3 Authority to Construct Permit Requirement

No new major stationary source or major modification to which the requirements of Sections 12.2.9 through 12.2.17 apply shall begin actual construction without an Authority to Construct Permit issued pursuant to Section 12.4 that states that the major stationary source or major modification will meet those requirements.

12.2.1.4 Projects

The requirements of Section 12.2 apply to projects at major stationary sources in accordance with the principles set out in paragraphs (a) through (e) below:

- (a) Except as otherwise provided in Section 12.2.1.5, a project is a major modification for a regulated NSR pollutant if it causes two (2) types of emissions increases: a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
- (b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase will occur depends upon the type of emissions units being added or modified as part of the project, according to paragraphs (c) through (e) of Section 12.2.1.4. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major

stationary source is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

- (c) **Actual-to-Projected-Actual Applicability Test for Projects that only involve Existing Emissions Units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.
- (d) **Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
- (e) **Hybrid Test for Projects That Involve Multiple Types of Emissions Units.** A significant emissions increase of a regulated NSR Pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraph (c) or (d) of Section 12.2.1.4, as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

12.2.1.5 Major Sources with Plantwide Applicability Limitations

For any major stationary source for a Plantwide Applicability Limitation (PAL) for a regulated NSR pollutant, the major stationary source shall comply with the requirements under Section 12.2.19.

12.2.1.6 Existing Emission Unit Projects

The provisions of this paragraph apply when a project occurs at an existing emissions unit at a major stationary source, other than a source with a PAL, and the project is not a part of a major modification, and the owner or operator elects to use the method specified in paragraphs (1)(A-D) of the definition of projected actual emissions, found in Section 12.2.2(nn).

- (a) Before beginning actual construction of the project, and as a condition of the source's Authority to Construct Permit, the owner or operator shall document and maintain a record of the following information:

- (1) A description of the project;

- (2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
- (3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (1)(C) of the definition of projected actual emissions, as found in Section 12.2.2(nn) and an explanation for why such amount was excluded, and any netting calculations if applicable.
- (b) If the emissions unit is an existing emissions unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Section 12.2.1.6(a) to the Control Officer. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the Control Officer before beginning actual construction.
- (c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in Section 12.2.1.6(a)(2); and calculate and maintain a record of the annual emissions, in tpy, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at any emissions unit.
- (d) If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Control Officer within sixty (60) days after the end of each calendar year during which records must be generated under Section 12.2.1.6(c) setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (e) If the emissions unit is an existing emissions unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Control Officer if the annual emissions, in tpy, from the project identified in Section 12.2.1.6(a) exceed the baseline actual emissions (as documented and maintained pursuant to Section 12.2.1.6(a)(3)) by a significant amount for that regulated NSR pollutant, and if such emissions differ from the projected actual emissions (prior to exclusion of the amount of emissions under the definition of projected actual emissions) as documented and maintained pursuant to Section 12.2.1.6(a)(3). Such report shall be submitted to the Control Officer within sixty (60) days after the end of such year. The report shall contain the following:

- (1) The name, address, and telephone number of the major stationary source;
- (2) The annual emissions, as calculated pursuant to Section 12.2.1.6(c); and
- (3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

12.2.1.7 Availability of Information

The owner or operator of the source shall make the information required to be documented and maintained pursuant to Section 12.2.1.6 available for review upon a request for inspection by the Control Officer.

12.2.1.8 Secondary Emissions

Secondary emissions shall not be considered in determining whether a stationary source would qualify as a major stationary source. If a stationary source is subject to Section 12.2 on the basis of the direct emissions from the stationary source, the requirements of Section 12.2.10, but no other provisions of Section 12.2, must also be met for secondary emissions.

12.2.2 Definitions

Unless the context otherwise requires, the following terms shall have the meanings set forth below for the purposes of Section 12.2. When a term is not defined in these paragraphs, it shall have the meaning given in Section 0, or the Act, in that order of priority.

- (a) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with this definition.
 - (1) In general, actual emissions as of a particular date shall equal the average rate, in tpy, at which the emissions unit actually emitted the regulated NSR pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Control Officer shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

- (2) The Control Officer may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
 - (3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.
 - (4) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL. Instead, projected actual emissions and baseline actual emissions shall apply for those purposes.
- (b) “Allowable emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to practicably enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:
- (1) Any applicable standards set forth in these AQRs and 40 CFR Parts 60, 61 or 63;
 - (2) Any applicable emission limitation in the Nevada SIP, including those with a future compliance date; or
 - (3) The emissions rate specified as a practicably enforceable permit condition, including those with a future compliance date.
- (c) “Baseline actual emissions” means the rate of emissions, in tpy, of a regulated NSR pollutant, as determined in accordance with paragraphs (1) through (4) of this definition.
- (1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tpy, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Control Officer shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
 - (A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups and shutdowns, except emissions from a shutdown associated with a malfunction.
 - (B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the

source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

- (i) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must comply as of the particular date, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. For the purposes of determining baseline actual emissions for contemporaneous changes pursuant to paragraph (ii)(1)(B) of the definition of net emissions increase, the particular date is the date on which the particular change occurred. However, if an emission limitation is part of a Maximum Achievable Control Technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state of Nevada has taken credit for such emissions reductions in an attainment demonstration or maintenance plan, consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
- (C) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
- (D) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tpy, and for adjusting this amount if required by paragraph (1)(B) of this definition.
- (2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tpy, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Control Officer for a permit required under these regulations, whichever is earlier, except that the

10-year period shall not include any period earlier than November 15, 1990.

- (A) The average rate shall include fugitive emissions to the extent quantifiable.
- (B) The average rate shall include emissions associated with startups and shutdowns, except emissions from a shutdown associated with a malfunction.
- (C) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
- (D) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply had such major stationary source been required to comply with such limitations during the consecutive 24-month period. For the purposes of determining baseline actual emissions for contemporaneous changes pursuant to paragraph (ii)(1)(B) of the definition of net emissions increase, the particular date is the date on which the particular change occurred. However, if an emission limitation is part of a Maximum Achievable Control Technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state of Nevada has taken credit for such emissions reductions in an attainment demonstration or maintenance plan, consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
- (E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
- (F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tpy, and for adjusting this amount if required by paragraphs (2)(C) and (D) of this definition.

- (3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
- (4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (1) of this definition, for other existing emissions units in accordance with the procedures contained in paragraph (2) of this definition, and for a new emissions unit in accordance with the procedures contained in paragraph (3) of this definition.
- (d) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under 40 CFR Part 81 in which the major stationary source or major modification establishing the minor source baseline date would construct, or in which it would have an air quality impact equal to or greater than one (1) microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date has been established.
- (1) Area redesignations under 40 CFR Part 81 cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:
- (A) Establishes a minor source baseline date; or
- (B) Is subject to Section 12 of the AQRs.
- (2) Any baseline area established originally for the Total Suspended Particulates (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that such baseline area shall not remain in effect if the Control Officer rescinds the corresponding minor source baseline date.
- (e) "Baseline concentration" means:
- (1) That ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established, and shall include:
- (A) The actual emissions, representative of sources in existence on the applicable minor source baseline date, except as otherwise provided in paragraph (2) of this definition; and

- (B) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.
- (2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):
- (A) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and
- (B) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.
- (f) “Basic design parameter” means:
- (1) Except as provided in paragraph (3) of this definition, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate, or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British Thermal Units (Btu) content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.
- (2) Except as provided in paragraph (3) of this definition, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.
- (3) If the owner or operator believes the basic design parameter(s) in paragraphs (1) and (2) of this definition is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Control Officer an alternative basic design parameter(s) for the source’s process unit(s). If the Control Officer approves of the use of an alternative basic design parameter(s), the Control Officer shall issue a permit that is legally enforceable that records such basic design parameter(s) and

requires the owner or operator to comply with such parameter(s).

- (4) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (1) and (2) of this definition.
 - (5) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the 5-year period immediately preceding the planned activity.
 - (6) Efficiency of a process unit is not a basic design parameter.
 - (7) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.
- (g) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.
- (h) "Best Available Control Technology (BACT)" means an emission limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Control Officer, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the Control Officer determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a de-

sign, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

- (i) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same SIC or NAICS code) as described in either the Standard Industrial Classification manual, 1972, as amended by the 1977 supplement or the North American Industrial Classification System manual.
- (ii) "Categorical stationary source" means any stationary source of air pollutants that belongs to one of the following categories:
- (1) Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;
 - (2) Coal cleaning plants (with thermal dryers);
 - (3) Kraft pulp mills;
 - (4) Portland cement plants;
 - (5) Primary zinc smelters;
 - (6) Iron and steel mills;
 - (7) Primary aluminum ore reduction plants;
 - (8) Primary copper smelters;
 - (9) Municipal incinerators capable of charging more than 50 tons of refuse per day;
 - (10) Hydrofluoric, sulfuric, or nitric acid plants;
 - (11) Petroleum refineries;
 - (12) Lime plants;
 - (13) Phosphate rock processing plants;

- (14) Coke oven batteries;
 - (15) Sulfur recovery plants;
 - (16) Carbon black plants (furnace process);
 - (17) Primary lead smelters;
 - (18) Fuel conversion plants;
 - (19) Sintering plants;
 - (20) Secondary metal production plants;
 - (21) Chemical process plants;
 - (22) Fossil-fuel boilers (or combination thereof) totaling more than 250 million Btu per hour heat input;
 - (23) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (24) Taconite ore processing plants;
 - (25) Glass fiber processing plants; and
 - (26) Charcoal production plants.
 - (27) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Act.
- (k) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage at a new or existing facility, which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen (NO_x) associated with the utilization of coal in the generation of electricity or process steam which was not in widespread use as of November 15, 1990.
- (l) "Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least twenty (20) percent of the total cost of the demonstration project.
- (m) "Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all nec-

essary preconstruction approvals or permits, including an Authority to Construct Permit, and either has:

- (1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
 - (2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
- (n) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Control Officer from requesting or accepting any additional information.
- (o) "Construction" means any physical change, or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.
- (p) "Continuous Emissions Monitoring System (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of Section 12.2 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.
- (q) "Continuous Emissions Rate Monitoring System (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
- (r) "Continuous Parameter Monitoring System (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of Section 12.2, to monitor process and control device operational parameters and other information, and to record average operational parameter value(s) on a continuous basis.
- (s) "Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity, and more than 25 MW electrical output, to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

- (t) "Emissions unit" means any part of a stationary source that emits, or would have the potential to emit, any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of Section 12.2, there are two types of emissions units, as described in paragraphs (1) and (2) of this definition:
- (1) A "new emissions unit" is any emissions unit which is (or will be) newly constructed and which has existed for less than two (2) years from the date such emissions unit first operated. For the purposes of this definition, the date an emissions unit first operated shall not be extended by any shakedown period established pursuant to paragraph (ii)(6) of Section 12.2.2.
- (2) An "existing emissions unit" is any emissions unit that does not meet the requirements in paragraph (1) of this definition. A replacement unit is an existing emissions unit.
- (u) "Federally Enforceable" means all limitations and conditions which are enforceable by the Administrator.
- (v) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.
- (w) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (x) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.
- (y) "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing the power of self-government.
- (z) "Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.
- (aa) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air-quality environmental impacts.
- (bb) "Lowest Achievable Emission Rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:

- (1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed major stationary source demonstrates that such limitations are not achievable; or
- (2) The most stringent emission limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the LAER for the new or modified emissions units within the stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

For purposes of this definition only, the term "any state" means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, and includes the Commonwealth of the Northern Mariana Islands.

(cc) "Low terrain" means any area other than high terrain.

(dd) "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

- (1) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.
- (2) A physical change or change in the method of operation shall not include:
 - (A) Routine maintenance, repair, and replacement;
 - (B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
 - (C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

- (D) Use of an alternative fuel at a steam generating unit, to the extent that the fuel is generated from municipal solid waste;
- (E) Use of an alternative fuel or raw material by a stationary source which:
- (i) The source was capable of accommodating before January 6, 1975, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to Section 12 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, or
 - (ii) The source is approved to use under any permit issued under Section 12 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, or 40 CFR 52.21.
- (F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to Subpart I of 40 CFR Part 51.
- (G) Any change in ownership at a stationary source;
- (H) The installation, operation, cessation, or removal of a Temporary Clean Coal Technology Demonstration Project, provided that the project complies with:
- (i) The Nevada SIP; and
 - (ii) Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.
- (I) The installation or operation of a permanent Clean Coal Technology Demonstration Project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or
- (J) The reactivation of a very clean coal-fired electric utility steam generating unit.

- (3) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under Section 12.2.19 for a PAL for that regulated NSR pollutant. Instead, the definition of PAL major modification shall apply.
- (4) The fugitive emissions of a major stationary source shall not be included in determining, for any of the purposes of Section 12.2, whether a particular physical change or change in the method of operation is a major modification unless the major stationary source is a categorical stationary source or belongs to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

(ee) "Major source baseline date" means:

- (1) In the case of particulate matter and sulfur dioxide, January 6, 1975, and
- (2) In the case of nitrogen dioxide, February 8, 1988.

(ff) "Major stationary source"

(1) Means:

- (A) Any of the categorical stationary sources of air pollutants which emits, or has the potential to emit, 100 tpy or more of any regulated NSR pollutant;
- (B) Notwithstanding the stationary source size otherwise specified in paragraph (1) of this definition, any non-categorical stationary source which emits, or has the potential to emit, 250 tpy or more of a regulated NSR pollutant; or
- (C) Any physical change that would occur at a stationary source not qualifying under paragraphs (1)(A) or (1)(B) of this definition, as a major stationary source, if the change would constitute a major stationary source by itself.
- (2) A major stationary source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.
- (3) The fugitive emissions of a stationary source shall not be included in determining, for any of the purposes of Section 12.2, whether it is a major stationary source, unless the source is a categorical stationary source or belongs to any other stationary

source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

(gg) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to Section 12 of the AQRs submits a complete application under the relevant regulations.

(1) The trigger date is:

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

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

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

(A) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable for the pollutant on the date of its complete application under Section 12.2 of the AQRs; and

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

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

(hh) "Necessary preconstruction approvals or permits" means those permits or approvals required under air quality control laws and regulations which are part of the Nevada SIP, these regulations, or federal air quality control laws and regulations, including the Authority to Construct Permits issued pursuant to Section 12.4.

(ii) "Net emissions increase (NEI)" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the following:

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

(A) The increase in emissions from a particular physical change, or change in the method of operation, at a stationary source as calculated pursuant to Sections 12.2.1.4(a) through (e); and

(B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.

(C) For the purposes of calculating increases and decreases under paragraph (1)(B) of this definition, baseline actual emissions shall be determined as provided in the definition of baseline actual emissions, except that paragraphs (1)(C) and (2)(E) of that definition shall not apply.

(i) For the purposes of calculating increases under paragraph (1)(B) of this definition, actual emissions after the contemporaneous project shall be determined as provided in the definition of actual emissions, except as provided in paragraph (1)(C)(iii) of this definition.

(ii) For the purposes of calculating increases under paragraph (1)(B) of this definition, if the Control Officer determines that there is no sufficiently representative time period of actual emissions after a contemporaneous project, pursuant to Section 12.2.2(a)(1), actual emissions after the contemporaneous project shall be determined as provided in the definition of projected actual emissions.

(iii) For the purposes of calculating decreases under paragraph (1)(B) of this definition, actual emissions after the contemporaneous project shall be determined as provided in the definition of actual emissions.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five (5) years before construction on the particular change commences and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if the Control Officer has not relied on it in issuing a permit for the source under Section 12 or any other regulation approved by

the Administrator pursuant to 40 CFR Part 51, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

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

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

(C) The Control Officer has not relied on it in issuing any permit under Section 12, or any other regulations approved pursuant to 40 CFR Part 51, Subpart I, nor has the state of Nevada relied on it in demonstrating attainment or reasonable further progress; and

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

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown, or any new emissions unit that replaces an existing emissions unit and that requires shakedown, becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

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

(kk) "Predictive Emissions Monitoring System (PEMS)" means all of the equipment necessary to monitor process and control device opera-

tional parameters and other information, and calculate and record the mass emissions rate on a continuous basis.

(ll) "Prevention of Significant Deterioration (PSD) Permit" means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the Nevada SIP to implement the requirements of Part C, Subchapter I of the Act.

(mm) "Project" means a physical change in, or change in the method of operation of, an existing stationary source.

(nn) "Projected actual emissions" means the maximum annual rate, in tpy, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the ten (10) years following that date if (1) the project involves increasing the design capacity or potential to emit of any emissions unit for that regulated NSR pollutant, and (2) full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(1) In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(A) Shall consider all relevant information, including, but not limited to historical operational data, the company's own representations, the company's expected business activity and highest projections of business activity, the company's filings with the county, state, or federal regulatory authorities, and compliance plans under these regulations;

(B) Shall include fugitive emissions to the extent quantifiable;

(C) Shall include emissions associated with startups and shutdowns except emissions from a shutdown associated with a malfunction; and

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

(E) In lieu of using the method set out in paragraphs (1)(A)-(D) of this definition, the owner or operator of the major stationary source may elect to use the emissions unit's potential to emit, in tpy.

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

- (1) Has not been in operation for the 2-year period prior to the enactment of the Act Amendments of 1990, and the emissions from such unit continue to be carried in the Clark County emissions inventory at the time of enactment;
- (2) Was equipped prior to shutdown with a continuous system of emissions control that achieved a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;
- (3) Is equipped with low-NOx burners prior to the time of commencing operations following reactivation; and
- (4) Is otherwise in compliance with the requirements of these regulations.

(pp) "Regulated NSR pollutant," for purposes of Section 12.2, means the following:

- (1) Any pollutant for which a National Ambient Air Quality Standard has been promulgated and any constituents or precursors identified by the Administrator;
- (2) Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
- (3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
- (4) Any pollutant that otherwise is subject to regulation under the Act, except that the following pollutants are not regulated NSR pollutants unless the listed pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act:
 - (A) Any or all Hazardous Air Pollutants (HAPs) either listed in Section 112(b)(1) of the Act or added to the list pursuant to

Section 112(b)(2) of the Act, and not delisted pursuant to Section 112(b)(3) of the Act; and

(B) Any or all substances listed pursuant to Section 112(r)(3) of the Act.

(qq) "Replacement unit" means an emissions unit for which all the criteria listed in paragraphs (1) through (4) of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced. The criteria are:

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

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

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

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

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

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded Clean Coal Technology Demonstration Project funding as of January 1, 1991, by the U.S. Department of Energy.

(2) The Control Officer shall give expedited consideration to permit applications for any source that satisfies the requirements of

Section 12.2.2(rr) and is granted an extension under Section 409 of the Act.

(ss) “Secondary emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of Section 12.2, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tail-pipe of a motor vehicle, from a train, or from a vessel.

(tt) “Shutdown” means the cessation of operation of any air pollution control equipment or process equipment for any purpose, except routine phasing out of process equipment.

(uu) “Significant” means:

(1) In reference to a net emissions increase or a source’s potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- Carbon monoxide: 100 tpy;
- NO_x: 40 tpy;
- Sulfur dioxide: 40 tpy;
- Particulate matter: 25 tpy;
- PM₁₀: 15 tpy;
- PM_{2.5}: 10 tpy of direct PM_{2.5} emissions or 40 tpy of sulfur dioxide emissions or 40 tpy of nitrogen oxide emissions;
- Ozone: 40 tpy of volatile organic compounds or nitrogen oxides;
- Lead: 0.6 tpy;
- Fluorides: 3 tpy;
- Sulfuric acid mist: 7 tpy;
- Hydrogen sulfide (H₂S): 10 tpy;
- Total reduced sulfur (including H₂S): 10 tpy;

- Reduced sulfur compounds (including H₂S): 10 tpy;
 - Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 x 10⁻⁶ megagrams per year (3.5 x 10⁻⁶ tpy).
 - Municipal waste combustor metals (measured as Particulate Matter): 14 megagrams per year (15 tpy);
 - Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy);
 - Municipal solid waste landfills emissions (measured as non-methane organic compounds): 45 megagrams per year (50 tpy); and
 - Ozone-depleting substances: 100 tpy.
- (2) “Significant” means, in reference to a net emissions increase or a source’s potential to emit a regulated NSR pollutant that is not listed in this definition, any emissions rate.
- (3) Notwithstanding the pollutant-specific significance levels specified in this definition “significant” means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1 microgram per cubic meter (24-hour average).
- (vv) “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.
- (ww) “Startup” means the setting into operation of any air pollution control equipment or process equipment for any purpose except the routine phasing in of process equipment.
- (xx) “Stationary source” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.
- (yy) “Temporary Clean Coal Technology Demonstration Project” means a Clean Coal Technology Demonstration Project that is operated for a period of five (5) years or less, and which complies with the requirements of these regulations and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

12.2.3 Ambient Air Increments

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

Table 12.2-1. Increment Limits

Pollutant		Maximum allowable increases ($\mu\text{g}/\text{m}^3$)
Class I		
<u>Particulate Matter</u>	<u>PM₁₀, annual arithmetic mean</u>	<u>4</u>
	<u>PM₁₀, 24-hr maximum</u>	<u>8</u>
<u>Sulfur Dioxide</u>	<u>Annual arithmetic mean</u>	<u>2</u>
	<u>24-hr maximum</u>	<u>5</u>
	<u>3-hr maximum</u>	<u>25</u>
<u>Nitrogen Dioxide</u>	<u>Annual arithmetic mean</u>	<u>2.5</u>
Class II		
<u>Particulate Matter</u>	<u>PM₁₀, annual arithmetic mean</u>	<u>17</u>
	<u>PM₁₀, 24-hr maximum</u>	<u>30</u>
<u>Sulfur Dioxide</u>	<u>Annual arithmetic mean</u>	<u>20</u>
	<u>24-hr maximum</u>	<u>91</u>
	<u>3-hr maximum</u>	<u>512</u>
<u>Nitrogen Dioxide</u>	<u>Annual arithmetic mean</u>	<u>25</u>
Class III		
<u>Particulate Matter</u>	<u>PM₁₀, annual arithmetic mean</u>	<u>34</u>
	<u>PM₁₀, 24-hr maximum</u>	<u>60</u>
<u>Sulfur Dioxide</u>	<u>Annual arithmetic mean</u>	<u>40</u>
	<u>24-hr maximum</u>	<u>182</u>
	<u>3-hr maximum</u>	<u>700</u>
<u>Nitrogen Dioxide</u>	<u>Annual arithmetic mean</u>	<u>50</u>

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

12.2.4 Ambient Air Ceilings

No concentration of a pollutant shall exceed the concentration permitted under the secondary National Ambient Air Quality Standard or the primary National Ambient Air Quality Standard, whichever is lowest for the pollutant, for a period of exposure.

12.2.5 Restrictions On Area Classifications

12.2.5.1 Class I Areas

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

- (a) International parks,
- (b) National wilderness areas which exceed 5,000 acres in size,
- (c) National memorial parks which exceed 5,000 acres in size, and
- (d) National parks which exceed 6,000 acres in size.

12.2.5.2 Redesignation of Class I Areas

Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in 40 CFR Part 51.

12.2.5.3 Class II Areas

Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in 40 CFR Part 51.

12.2.5.4 Redesignating Areas

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

- (a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and
- (b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

12.2.5.5 Exclusions from Increment Consumption

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

- (1) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Envi-

ronmental Coordination Act of 1974 (or any superseding legisla-
tion) over the emissions from such sources before the effective
date of such an order;

(2) Concentrations attributable to the increase in emissions from
sources which have converted from using natural gas by reason
of natural gas curtailment plan in effect pursuant to the Federal
Power Act over the emissions from such sources before the ef-
fective date of such plan;

(3) Concentrations of particulate matter attributable to the increase
in emissions from construction or other temporary emission-
related activities of new or modified sources;

(4) The increase in concentrations attributable to new sources out-
side the United States over the concentrations attributable to ex-
isting sources which are included in the baseline concentration;
and

(5) Concentrations attributable to the temporary increase in emis-
sions of sulfur dioxide, particulate matter, or nitrogen oxides
from stationary sources which are affected by plan revisions ap-
proved by the Administrator as meeting the criteria specified in
paragraph (a)(3) of Section 12.2.5.5.

(b) If the plan provides that the concentrations to which paragraphs
(a)(1) or (a)(2) of Section 12.2.5.5 refers shall be excluded, it shall
also provide that no exclusion of such concentrations shall apply
more than five (5) years after the effective date of the order to which
paragraph (a)(1) of Section 12.2.5.5 refers or the plan to which para-
graph (a)(2) of Section 12.2.5.5, refers, whichever is applicable. If
both such order and plan are applicable, no such exclusion shall ap-
ply more than five (5) years after the later of such effective dates.

(c) For purposes of excluding concentrations pursuant to paragraph
(a)(5) of Section 12.2.5.5, the Administrator may approve a plan revi-
sion that:

(1) Specifies the time over which the temporary emissions increase
of sulfur dioxide, particulate matter, or nitrogen oxides would oc-
cur. Such time is not to exceed two (2) years in duration unless
a longer time is approved by the Administrator.

(2) Specifies that the time period for excluding certain contributions
in accordance with paragraph (c)(1) of Section 12.2.5.5, is not
renewable;

- (3) Allows no emissions increase from a stationary source which would:
- (A) Impact a Class I area or an area where an applicable increment is known to be violated; or
 - (B) Cause or contribute to the violation of a National Ambient Air Quality Standard.
- (4) Requires limitations to be in effect the end of the time period specified in accordance with paragraph (c)(1) of Section 12.2.5.5, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

12.2.6 Redesignation

12.2.6.1 Clark County

All areas of Clark County (except as otherwise provided under Section 12.2.5) are designated Class II as of December 5, 1974. Redesignation of any area of the county (except as otherwise precluded by Section 12.2.5) may be proposed by the Control Officer, as provided below and subject to approval by the Administrator, as a revision to the Nevada SIP.

12.2.6.2 Requirements

- (a) Clark County, through the state of Nevada, may submit to the Administrator a proposal to redesignate areas of the county Class I or Class II provided that:
- (1) At least one public hearing has been held in accordance with the procedures established in Section 12.2.16;
 - (2) Other states, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation were notified at least thirty (30) days prior to the public hearing;
 - (3) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation, was prepared and made available for public inspection at least thirty (30) days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

- (4) Prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the county, through the state of Nevada, has provided written notice to the appropriate Federal Land Manager and afforded adequate opportunity (not in excess of sixty (60) days) to confer with the county respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any Federal Land Manager had submitted written comments and recommendations, the county shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the Federal Land Manager); and
- (5) The county, through the state of Nevada, has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.
- (b) Any area other than an area to which Section 12.2.5 refers may be redesignated as Class III if:
- (1) The redesignation would meet the requirements of Section 12.2.6.2;
- (2) The redesignation, except any established by an Indian Governing Body, has been specifically approved by the county and 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 (unless state law provides that the redesignation must be specifically approved by state legislation), and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;
- (3) The redesignation would not cause or contribute to a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any National Ambient Air Quality Standard; and
- (4) Any permit application for any major stationary source or major modification, subject to review under Section 12.2.11, which could receive a permit under Section 12.2 only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available insofar as was

practicable for public inspection prior to any public hearing on redesignation of the area as Class III.

12.2.6.3 **Reserved**

12.2.6.4 **Administrator Approval**

The Administrator will disapprove, within ninety (90) days of submission, a proposed redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of Section 12.2.6 or is inconsistent with Section 12.2.5. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

12.2.6.5 **Resubmitting Disapproved Proposal**

If the Administrator disapproves any proposed redesignation, the county may resubmit the proposal after correcting the deficiencies noted by the Administrator.

12.2.7 **Stack Heights**

12.2.7.1 **Emission Limitation**

The degree of emission limitation required for control of any air pollutant under Section 12.2 shall not be affected in any manner by:

- (a) So much of the stack height of any source as exceeds good engineering practice; or
- (b) Any other dispersion technique.

12.2.7.2 **Time Frame**

Section 12.2.7.1 shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

12.2.7.3 **Stack Height Limitation**

- (a) The limitations set forth herein shall not apply to stacks or dispersion techniques used by the owner or operator prior to December 31, 1970, for which the owner or operator had:
 - (1) Begun, or caused to begin, a continuous program of physical on-site construction of the stack;

- (2) Entered into building 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; or
- (3) Coal-fired steam electric generating units, subject to the provisions of Section 118 of the Act, which commenced operation before July 1, 1975, with stacks constructed under a construction contract awarded before February 8, 1974.
- (b) Good engineering practice stack height is calculated as the greater of the four numbers in paragraphs (b)(1) through (b)(4) of Section 12.2.7.3:
- (1) 213.25 feet (65 meters);
- (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 under 40 CFR Part 51 or 52, $H_g = 2.5H$;
- (3) For all other stacks, $H_g = H + 1.5L$, where:
- $H_g =$ Good engineering practice stack height, measured from the ground-level elevation at the base of the stack
- $H =$ Height of nearby structure, measured from the ground-level elevation at the base of the stack
- $L =$ Lesser dimension (height or projected width) of nearby structure
- provided that the EPA, the Control Officer, or a local control agency may require the use of a field study or fluid model to verify good engineering practice (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, nearby structures, or nearby terrain obstacles.
- (5) For a specific structure or terrain feature, "nearby" shall be:
- (A) For purposes of applying the formulae in paragraphs (b)(2) and (b)(3) of Section 12.2.7.3, that distance up to five (5)

times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile);

- (B) For conducting demonstrations under paragraph (b)(4) of Section 12.2.7.3, not greater than 0.8 km (1/2 mile). An exception is that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten (10) times the maximum height (H+) of the feature, not to exceed two (2) miles if such feature achieved a height (H+) 0.8 km from the stack. The height shall be at least forty (40) percent of the GEP stack height as determined by the formula provided in paragraph (b)(3) of Section 12.2.7.3 or 85 feet (26 meters), whichever is greater, as measured from the ground-level elevation at the base of the stack.
- (6) "Excessive concentrations" means, for the purpose of determining GEP stack height under paragraph (b)(4) of Section 12.2.7.3:
- (A) For sources seeking credit for stack height exceeding that established under paragraphs (b)(2) and (b)(3) of Section 12.2.7.3, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty (40) percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects, and which contributes to a total concentration due to emissions from all sources that is greater than a National Ambient Air Quality Standard. For sources subject to the requirements for permits or permit revisions under Section 12.2.7.3, 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 forty (40) percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects, and greater than the applicable maximum allowable increase contained in Section 12.2.3. The allowable emissions rate to be used in making demonstrations under paragraph (b)(4) of Section 12.2.7.3 shall be prescribed by the new source performance standard which 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 Control Officer, an alternative emission rate shall be established in consultation with the source owner or operator;

(B) For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under paragraphs (b)(2) and (b)(3) of Section 12.2.7.3, either:

(i) A maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects as provided in paragraph (b)(4) of Section 12.2.7.3, except that the emission rate specified by any applicable SIP shall be used; or

(ii) The actual presence of a local nuisance caused by the existing stack, as determined by the Control Officer.

(C) For sources seeking credit after January 12, 1979, for a stack height determined under paragraphs (b)(2) and (b)(3) of Section 12.2.7.3, where the Control Officer 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 stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in paragraphs (b)(2) and (b)(3) of Section 12.2.7.3, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least forty (40) percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(c) The degree of emission limitation required of any source after the respective date given in paragraph (a) of Section 12.2.7.3 for control of any pollutant shall not be affected by so much of any source's stack height that exceeds good engineering practice, or by any other dispersion technique.

(d) Before the Control Officer issues an Authority to Construct Permit or permit revision under Section 12.2 to a source based on a good engineering practice stack height that exceeds the height allowed by paragraph (b) of Section 12.2.7.3, the Control Officer shall notify the public of the availability of the demonstration study and provide the

opportunity for a public hearing in accordance with the requirements of Section 12.2.16.

12.2.8 Exemptions

The requirements of Sections 12.2.9 through 12.2.17 shall not apply to a particular major stationary source or major modification if:

- (a) The major stationary source or major modification would be a non-profit health or nonprofit educational institution, or the major modification would occur at such an institution; or
- (b) The source is a portable stationary source which has previously received a permit, and:
 - (1) The owner or operator proposes to relocate the major stationary source, and emissions of the major stationary source at the new location would be temporary;
 - (2) The emissions from the major stationary source would not exceed its allowable emissions;
 - (3) The emissions from the major stationary source would impact no Class I area and no area where an applicable increment is known to be violated; and
 - (4) Reasonable notice is given to the Control Officer prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Control Officer not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Control Officer.

12.2.8.1 Nonattainment Areas

The requirements of Sections 12.2.9 through 12.2.17 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the major stationary source or major modification is located in an area designated as nonattainment under 40 CFR 81.329.

12.2.8.2 Class I Areas

The requirements of Sections 12.2.10, 12.2.12, and 12.2.14 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the allowable emissions of that pollutant from the major stationary source or the net emissions increase of that pollutant from the major modification:

- (a) Would impact no Class I area and no area where an applicable increment is known to be violated; and
- (b) Would be temporary.

12.2.8.3 Class II Areas

The requirements of Sections 12.2.10, 12.2.12, and 12.2.14 as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT would be less than fifty (50) tpy.

12.2.8.4 Threshold Limits

The Control Officer may exempt a major stationary source or major modification from the requirements of Section 12.2.12, with respect to monitoring for a particular pollutant, if:

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

Table 12.2-2. Air Quality Impact Limits

<u>Pollutant</u>	<u>Emissions Increase ($\mu\text{g}/\text{m}^3$)</u>
<u>Carbon monoxide, 8-hour average</u>	<u>575</u>
<u>Nitrogen dioxide, annual average</u>	<u>14</u>
<u>PM₁₀, 24-hour average</u>	<u>10</u>
<u>Sulfur dioxide, 24-hour average</u>	<u>13</u>
<u>Ozone</u>	<u>No <i>de minimis</i> air quality level is provided for ozone. However, any net increase of 100 tpy or more of VOCs or NO_x subject to PSD would require an ambient impact analysis, including the gathering of ambient air quality data.</u>
<u>Lead, 3-month average</u>	<u>0.1</u>
<u>Fluorides, 24-hour average</u>	<u>0.25</u>
<u>Total reduced sulfur, 1-hour average</u>	<u>10</u>
<u>Hydrogen sulfide, 1-hour average</u>	<u>0.2</u>
<u>Reduced sulfur compounds, 1-hour average</u>	<u>10</u>

- (b) The concentrations of the pollutant in the area that the major stationary source or major modification would affect are less than the concentrations listed in paragraph (a) of Section 12.2.8.4; or

(c) The pollutant is not listed in paragraph (a) of Section 12.2.8.4.

12.2.9 Control Technology Review

A major stationary source or major modification shall meet each applicable requirement.

12.2.9.1 Major Stationary Sources

A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

12.2.9.2 Major Modifications

A major modification shall apply BACT for each regulated NSR pollutant for which it would result in a significant net emissions increase at the stationary source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change, or change in the method of operation, in the emissions unit.

12.2.9.3 Phased Construction Projects

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

12.2.10 Source Impact Analysis

12.2.10.1 Demonstration of Impact

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

- (a) Any NAAQS in any air quality control region; or
- (b) Any applicable maximum allowable increase over the baseline concentration in any area.

12.2.10.2 Violation of Standard

A major stationary source or major modification will be considered to cause or contribute to a violation of a National Ambient Air Quality Standard when

such source or modification would, at a minimum, exceed the significance levels listed in Table 12.2-3 at any locality that does not (or would not) meet the applicable national standard.

Table 12.2-3. Significance Levels

Pollutant	Annual	Significance Levels Averaging time (hours)			
		24	8	3	1
SO ₂	1.0 µg/m ³	5 µg/m ³		25 µg/m ³	
PM ₁₀	1.0 µg/m ³	5 µg/m ³			
NO ₂	1.0 µg/m ³				
CO			0.5 mg/m ³		2 mg/m ³

12.2.11 Air Quality Models

12.2.11.1 Model Applicability

All estimates of ambient concentrations required under Section 12.2 shall be based on applicable air quality models, databases, and other requirements specified in 40 CFR Part 51, Appendix W ("Guideline on Air Quality Models").

12.2.11.2 Model Modifications and Substitutions

Where an air quality model specified in 40 CFR Part 51, Appendix W ("Guideline on Air Quality Models") is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with Section 12.2.16.

12.2.12 Air Quality Analysis

12.2.12.1 Preapplication Analysis

(a) Any application for an Authority to Construct Permit under Section 12.2 shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following :

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

- (2) For the modification, each pollutant for which it would result in a significant net emissions increase.
- (b) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Control Officer determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.
- (c) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
- (d) In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one (1) year and shall represent at least the year preceding receipt of the application; except that, if the Control Officer determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.
- (e) The owner or operator of a proposed new stationary source or modification of an existing stationary source of volatile organic compounds who satisfies all conditions of 40 CFR Part 51, Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under Section 12.2.12.1.
- (f) With respect to any requirements for air quality monitoring of PM₁₀, the owner or operator of the major stationary source or major modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of PM₁₀ using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Control Officer.

12.2.12.2 Post-Construction Monitoring

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

12.2.12.3 Operations of Monitoring Stations

The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B during the operation of monitoring stations for purposes of satisfying Section 12.2.12.

12.2.13 Source Information

The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under Section 12.2.13.

12.2.13.1 Required Information

With respect to a major stationary source or major modification to which Sections 12.2.9, 12.2.11, 12.2.13, and 12.2.15 apply, such information shall include:

- (a) A description of the nature, location, design capacity, and typical operating schedule of the major stationary source or major modification, including specifications and drawings showing its design and plant layout;
- (b) A detailed schedule for construction of the major stationary source or major modification;
- (c) A detailed description as to what system of continuous emission reduction is planned for the major stationary source or major modification, emission estimates, and any other information necessary to determine that BACT would be applied.

12.2.13.2 Information on Air Quality Impacts

Upon request of the Control Officer, the owner or operator shall also provide information on:

- (a) The air quality impact of the major stationary source or major modification, including meteorological and topographical data necessary to estimate such impact; and
- (b) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since the major source baseline date in the area the major stationary source or major modification would affect.

12.2.14 Additional Impact Analyses

12.2.14.1 Visibility, Soils, and Vegetation

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

12.2.14.2 Commercial, Residential, Industrial, and Other Growth

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

12.2.15 Additional Requirements for Sources Impacting Class I Areas

12.2.15.1 Notice to EPA

The Control Officer shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification, and provide notice to the Administrator of every action related to the consideration of such permit.

12.2.15.2 Federal Land Manager

The Federal Land Manager and the federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality-related values (including visibility) of any such lands and to consider, in consultation with the Administrator, whether a proposed source or modification would have an adverse impact on such values. The Control Officer shall consult with the Federal Land Manager on a proposed major stationary source or major modification that may impact visibility in any Class I Area, in accordance with 40 CFR 51.307.

12.2.15.3 Impact of Denial on Air Quality-Related Values

A Federal Land Manager of any Class I lands may present to the county, after the Control Officer's preliminary determination (required under procedures developed in accordance with Section 12.2.16), 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 county, through the state of Nevada, concurs with such demonstration, the Control Officer shall not issue the permit.

12.2.15.4 Class I Variances

The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source would have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and so certifies to the state of Nevada, the Control Officer 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 following maximum allowable increases over baseline concentration for such pollutants.

Table 12.2-4. Maximum Allowable Pollutant Increases

<u>Pollutant</u>	<u>Maximum allowable increase ($\mu\text{g}/\text{m}^3$)</u>
<u>Particulate Matter:</u>	
<u>PM₁₀, annual arithmetic mean</u>	<u>17</u>
<u>PM₁₀, 24-hour maximum</u>	<u>30</u>
<u>Sulfur dioxide:</u>	
<u>Annual arithmetic mean</u>	<u>20</u>
<u>24-hour maximum</u>	<u>91</u>
<u>3-hr maximum</u>	<u>325</u>
<u>Nitrogen dioxide:</u>	
<u>Annual arithmetic mean</u>	<u>25</u>

12.2.15.5 Sulfur Dioxide Variance by Governor with Federal Land Manager's Concurrence

- (a) The owner or operator of a proposed source or modification which cannot be approved under procedures developed pursuant to Section 12.2.16 may demonstrate to the governor, through the Control Officer, that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four (24) hours or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility).

- (b) The Control Officer, through 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.
- (c) If such variance is granted, the Control Officer may issue a permit to such source or modification in accordance with provisions developed pursuant to Section 12.2.16, provided that the applicable requirements of the Nevada SIP are otherwise met.

12.2.15.6 Variance by the Governor with the President's Concurrence

- (a) The recommendations of the Control Officer, through 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.
- (b) The president may approve the governor's recommendation if he finds that such variance is in the national interest.
- (c) If such a variance is approved, the Control Officer may issue a permit in accordance with provisions developed pursuant to the requirements of Section 12.2.16, provided that the applicable requirements of the Nevada SIP are otherwise met.

12.2.15.7 Emission Limitations for Presidential or Gubernatorial Variance

In the case of a permit issued under procedures developed pursuant to Section 12.2.16, 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 maximum allowable increases over the baseline concentration shown in Table 12.2-5, and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, during any annual period.

Table 12.2-5. Maximum Allowable Increase ($\mu\text{g}/\text{m}^3$)

<u>Period of exposure</u>	<u>Low Terrain</u>	<u>High Terrain</u>
<u>24-hr maximum</u>	<u>36</u>	<u>62</u>
<u>3-hr maximum</u>	<u>130</u>	<u>221</u>

12.2.16 Public Participation

12.2.16.1 Notice of Proposed Action

- (a) An application shall be deemed to be complete unless, within sixty (60) days of receipt, the Control Officer notifies the applicant by certified mail that the application is deficient and not complete. In the event of a deficiency, the date of receipt of the application shall be the date on which the Control Officer received all required information.
- (b) Within one (1) year after receipt of a complete application, the Control Officer shall:
- (1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved; and
 - (2) Make available in at least one (1) location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.
- (c) After receipt of a complete application for an Authority to Construct Permit under Sections 12.2, or 12.3 and 12.4, the Control Officer shall publish in a newspaper of general circulation within Clark County, Nevada, within each region in which the proposed source would be constructed, and on the department's web site a Notice of Proposed Action on the application containing the following:
- (1) The date of the department's receipt of the completed application;
 - (2) The location where documents relevant to the application will be available;
 - (3) For an Authority to Construct Permit reviewed pursuant to Section 12.2, a summary of the following:
 - (A) The results of air quality modeling and any other air quality impact analyses;
 - (B) The results of the analysis of alternatives;
 - (C) The determination of BACT; and
 - (D) The level of PSD increments to be consumed by the source, as determined under Section 12.2.3.

- (4) For an Authority to Construct Permit reviewed pursuant to Section 12.3, a summary of the following:
 - (A) Statewide compliance demonstration;
 - (B) Air quality impact analysis;
 - (C) Determination of the LAER; and
 - (D) Description of the emissions offsets relied upon in the application.
 - (5) The department's preliminary determination of whether the application should be approved or disapproved;
 - (6) The proposed Authority to Construct Permit conditions;
 - (7) A determination by the Control Officer that the approval of the construction will not cause or contribute to a violation of a National Ambient Air Quality Standard, a PSD increment identified in Section 12.2.3, or otherwise violate any provisions of the Nevada SIP;
 - (8) The total PTE of each regulated NSR pollutant, as applicable;
 - (9) An opportunity for any person to submit written comments on the application and any documents relevant to the application;
and
 - (10) An opportunity for any person to request a public hearing at which oral and written comments on the application will be received, or notice of such a hearing if one has been scheduled.
- (d) All written comments must be received by the Control Officer within thirty (30) days from the publication date of the Notice of Proposed Action.

12.2.16.2 Distribution of Notice

The Control Officer shall send a copy of the Notice of Proposed Action to the applicant and to officials and agencies having jurisdiction over the location where the proposed construction would occur, including:

- (a) Any other state or local air pollution control agencies;
- (b) The chief executives of the city and county where the source would be located;

- (c) Any comprehensive regional land use planning agency;
- (d) Any state, Federal Land Manager, and Indian governing body whose lands may be affected by emissions from the source or modification;
- (e) The Regional Administrator for EPA's Region 9; and
- (f) Any other person who requests such notice.

12.2.16.3 Public Hearings

During the Notice of Proposed Action public comment period specified in Section 12.2.16.1, any person may petition the Control Officer, in writing, for a public hearing. All such petitions shall contain the petitioner's name, address, daytime telephone number, and the reason for requesting a hearing.

12.2.16.4 Time Frame

If a proper petition is filed, and the Control Officer determines that there is a significant degree of public interest, the Control Officer shall hold a public hearing no sooner than thirty (30) days after the date of the Notice of Proposed Action but no later than seventy (70) days, after the date of the Notice of Proposed Action. In determining if a significant degree of public interest exists, the Control Officer shall consider all relevant factors, including, but not limited to, the number of petitioners, the nature of their concerns as stated in their petitions, the type and quantity of pollutants emitted by the source and the proximity of the source to sensitive areas like parks, schools, hospitals, residential areas or Class 1 air sheds.

The petitioner and the applicant shall receive no less than seven (7) days' prior written notice of the date and location of the public hearing. Any notice of hearing shall also be posted on the department's website no less than seven (7) days prior to the public hearing.

12.2.16.5 Comments and Approvals

The Control Officer shall also:

- (a) Consider all written comments submitted within a time specified in the notice of public comment, and all comments received at any public hearing(s), in making a final decision on the approvability of the application. The Control Officer shall make all comments available for public inspection in the same locations where the Control Officer made available preconstruction information relating to the proposed source or modification;
- (b) Make a final determination whether construction should be approved, approved with conditions, or disapproved; and

- (c) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Control Officer made available preconstruction information and public comments relating to the source.

12.2.16.6 Enhanced Public Participation Procedures

If the terms and conditions of an Authority to Construct Permit are to be incorporated into a Part 70 Operating Permit through an administrative permit revision, as provided in paragraph (a)(5) of Section 12.5.2.13, in addition to the foregoing public participation procedures, the applicant shall comply with the requirements of Section 12.5.2.17.

12.2.17 Source Obligation

12.2.17.1 Enforcement

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to Section 12.2 and with any changes to the application as required by the Control Officer, or with the terms of its Authority to Construct Permit, or any owner or operator of a source or modification subject to Section 12.2 who begins actual construction after the effective date of these AQRs without applying for and receiving an Authority to Construct Permit, shall be subject to enforcement action.

12.2.17.2 Termination

An Authority to Construct Permit shall terminate if construction is not commenced within eighteen (18) months after receipt of such permit if construction is discontinued for a period of eighteen (18) months or more, or if construction is not completed within a reasonable time. The Control Officer may extend the 18-month period upon a satisfactory showing of good cause why an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.

12.2.17.3 Compliance

The issuance of an Authority to Construct Permit shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Nevada SIP and any other requirements under local, state, or federal law.

12.2.17.4 Relaxation in Enforceable Limitations

At such time that a particular 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 stationary source or modification otherwise to emit a pollutant, then the requirements of Sections 12.2.9 through 12.2.17 shall apply to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

12.2.18 Innovative Control Technology

12.2.18.1 Request for Approval

An owner or operator of a proposed major stationary source or major modification may request the Control Officer to approve a system of innovative control technology.

12.2.18.2 Requirements for Approval

The Control Officer may, with the consent of the governor of the state of Nevada and the governors of other affected states, determine that the major stationary source or major modification may employ a system of innovative control technology if:

- (a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
- (b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Section 12.2.9.2 by a date specified by the Control Officer. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance;
- (c) The major stationary source or major modification would meet the requirements of Sections 12.2.9 and 12.2.10, 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 Control Officer;
- (d) The major stationary source or major modification would not, before the date specified by the Control Officer:
 - (1) Cause or contribute to a violation of an applicable National Ambient Air Quality Standard; or

- (2) Impact any area where an applicable increment is known to be violated.
- (e) All other Applicable Requirements, including those for public participation, have been met; and
- (f) The provisions of Section 12.2.15 (relating to Class I areas) have been satisfied with respect to all periods during the life of the major stationary source or major modification.

12.2.18.3 Withdrawal of Approval

The Control Officer shall withdraw any approval to employ a system of innovative control technology made under Section 12.2.18.2 if:

- (a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;
- (b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
- (c) The Control Officer 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.

12.2.18.4 BACT Extension for Failure or Withdrawal

If a major stationary source or major modification fails to meet the required level of continuous emission reduction within the specified time period, or the approval is withdrawn in accordance with Section 12.2.18.3, the Control Officer may allow the major stationary source or major modification up to an additional three (3) years to meet the requirement for the application of BACT through use of a demonstrated system of control.

12.2.19 Plantwide Applicability Limits (PALs)

The provisions in Sections 12.2.19.1 through 12.2.19.15 of this section govern actuals PALs.

12.2.19.1 Applicability

- (a) The Control Officer may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in Sections 12.2.19.1 through 12.2.19.15. The term "PAL" shall mean "actuals PAL" throughout Section 12.2.19.
- (b) Any physical change in, or change in the method of operation of, a major stationary source that maintains its total source-wide emis-

sions below the PAL level, meets the requirements of Section 12.2.19, and complies with the Authority to Construct Permit:

- (1) Is not a major modification for the PAL pollutant;
 - (2) Does not have to be approved through the PSD program; and
 - (3) Is not subject to the provisions in Section 12.2.17.4.
- (c) Except as provided under paragraph (b)(3) of Section 12.2.19.1, a major stationary source shall continue to comply with all applicable federal, state or county requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

12.2.19.2 Definitions

- (a) Unless the context otherwise requires, the following terms shall have the meanings set forth below for the purposes of Section 12.2.19. When a term is not defined in these paragraphs, it shall have the meaning given in Section 0, Section 12.4, or the Act.
- (1) "Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit, or have the potential to emit, the PAL pollutant.
 - (2) "Allowable emissions" means "allowable emissions" as defined in paragraph (a)(3) of Section 12.2.2, except as that definition is modified according to paragraph (A) of this definition:
 - (A) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
 - (3) "Major emissions unit" means:
 - (A) Any emissions unit that emits, or has the potential to emit, 100 tpy or more of the PAL pollutant in an attainment area; or
 - (B) Any emissions unit that emits, or has the potential to emit, the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas.
 - (4) "PAL" means an emission limitation, expressed in tpy, for a pollutant at a major stationary source that is enforceable as a prac-

tical matter and established source-wide in accordance with Sections 12.2.19.1 through 12.2.19.15.

- (5) "PAL effective date" generally means the date of issuance of the Authority to Construct Permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
- (6) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.
- (7) "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in, or change in the method of operation of, the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
- (8) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.
- (9) "Significant emissions unit" means an emissions unit that emits, or has the potential to emit, a PAL pollutant in an amount that is equal to or greater than the significant level as defined in these AQRs or the Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.
- (10) "Small emissions unit" means an emissions unit that emits, or has the potential to emit, the PAL pollutant in an amount less than the significant level for that PAL pollutant as defined in these AQRs or the Act, whichever is lower.

12.2.19.3 Permit Application Requirements

As part of a an application for a Part 70 Operating Permit requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Control Officer for approval:

- (a) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal, state or county applicable requirements, emission limitations, or work practices apply to each unit;
- (b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions asso-

ciated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction; and

- (c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by paragraph (a) of Section 12.2.19.13.

12.2.19.4 General Requirements for Establishing PALs

- (a) The Control Officer may establish a PAL at a major stationary source, provided that, at a minimum, the requirements in paragraphs (a)(1) through (a)(7) of Section 12.2.19.4 are met.
- (1) The PAL shall impose an annual emission limitation, in tpy, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
 - (2) The PAL shall be established in an Authority to Construct Permit that meets the public participation requirements in Section 12.2.19.5.
 - (3) The Authority to Construct Permit shall contain all the requirements of Section 12.2.19.7.
 - (4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit, or have the potential to emit, the PAL pollutant at the major stationary source.
 - (5) Each PAL shall regulate emissions of only one pollutant.
 - (6) Each PAL shall have a PAL effective period of ten (10) years.
 - (7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Sections 12.2.19.12 through 12.2.19.14 for each emissions unit under the PAL through the PAL effective period.

- (b) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant which occur during the PAL effective period creditable as decreases for purposes of offsets under Section 12.3.6 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

12.2.19.5 Public Participation Requirements for PALs

PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures in Section 12.2.16.

12.2.19.6 Setting the 10-year Actuals PAL Level

- (a) Except as provided in paragraph (b) of Section 12.2.19.6, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source plus an amount equal to the applicable significant level for the PAL pollutant under these AQRs or under the Act, whichever is lower. When establishing the actuals PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Control Officer shall specify a reduced PAL level(s) (in tpy) in the Authority to Construct Permit, to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Control Officer is aware of prior to issuance of the permit.
- (b) For newly constructed units (this does not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (a) of Section 12.2.19.6, the emissions must be added to the PAL level in an amount equal to the PTE of the units.

12.2.19.7 Contents of a Part 70 Operating Permit Containing a PAL

The contents shall include the information in paragraphs Section 12.2.19.7 (a) through (j) as listed below:

- (a) The PAL pollutant and the applicable source-wide emission limitation in tpy.
- (b) The effective date and the expiration date of the PAL conditions (i.e., PAL effective period).

- (c) Specification in the permit that if a major stationary source owner or operator applies to renew the PAL conditions in accordance with Section 12.2.19.10 before the end of the PAL effective period, then the PAL conditions shall not expire at the end of the PAL effective period. It shall remain in effect until a revised Part 70 Operating Permit is issued by the Control Officer;
- (d) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;
- (e) A requirement that, once the PAL conditions expire, the major stationary source is subject to the requirements of Section 12.2.19.9;
- (f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total, as required by paragraph (a) of Section 12.2.19.13;
- (g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Section 12.2.19.12;
- (h) A requirement to retain the records required under Section 12.2.19.13 on-site. Such records may be retained in an electronic format;
- (i) A requirement to submit the reports required under Section 12.2.19.14 by the required deadlines; and
- (j) Any other requirements that the Control Officer deems necessary to implement and enforce the PAL conditions.

12.2.19.8 PAL Effective Period and Reopening of the PAL Conditions in a Part 70 Operating Permit

The conditions in a Part 70 Operating Permit that contain a PAL shall include the following information:

- (a) **PAL Effective Period.** The Control Officer shall specify a PAL effective period of ten (10) years from the date of issuance.
- (b) **Reopening of the PAL Conditions in a Part 70 Operating Permit**
 - (1) During the PAL effective period, the permit shall require the Control Officer to reopen the PAL conditions in a Part 70 Operating Permit to:

- (A) Correct typographical/calculation errors made in setting the PAL, or reflect a more accurate determination of emissions used to establish the PAL;
 - (B) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under Section 12.3; or
 - (C) Revise the PAL to reflect an increase in the PAL, as provided under Section 12.2.19.11.
- (2) The Control Officer may reopen the conditions of a Part 70 Operating Permit authorizing a PAL for the following:
- (A) Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date.
 - (B) Reduce the PAL consistent with any other requirement that is enforceable as a practical matter, and that the Control Officer may impose on the major stationary source under the Nevada SIP.
 - (C) Reduce the PAL if the Control Officer determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard or PSD increment violation, or to an adverse impact on an air quality-related value that has been identified for a federal Class I area by a Federal Land Manager and for which information is available to the general public.
- (3) Except for the permit reopening in paragraph (b)(1)(A) of Section 12.2.19.8 for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out as significant permit revisions to a Part 70 Operating Permit.

12.2.19.9 Expiration of a PAL

Any PAL which is not renewed in accordance with the procedures in Section 12.2.19.10 shall expire at the end of the PAL effective period, and the requirements in paragraphs (a) through (e) of Section 12.2.19.9 shall apply.

- (a) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised Part 70 Operating Permit established according to the procedures in paragraphs (a)(1) and (a)(2) of Section 12.2.19.9:

- (1) Within the time frame specified for PAL renewals in paragraph (b) of Section 12.2.19.10, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Control Officer) by distributing the PAL allowable emissions for the affected major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (e) of Section 12.2.19.10, such distribution shall be made as if the PAL had been adjusted.
 - (2) The Control Officer will decide whether and how the PAL allowable emissions will be distributed and issue a revised Part 70 Operating Permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Control Officer determines is appropriate.
- (b) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Control Officer may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
 - (c) Until the Control Officer issues the revised Part 70 Operating Permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (a)(2) of Section 12.2.19.9, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
 - (d) Any physical change in, or change in the method of operation at, the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification.
 - (e) The major stationary source owner or operator shall continue to comply with any federal, state or county applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period, except for those limitations that were eliminated by the PAL in accordance with the provisions of paragraph (b)(3) of Section 12.2.19.1.

12.2.19.10 Renewal of a PAL

- (a) The Control Officer will follow the procedures specified in Sections 12.2.19.5 and 12.4 in approving any request to renew the PAL condi-

tions in a Part 70 Operating Permit, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Control Officer.

- (b) **Application Deadline.** A major stationary source owner or operator shall submit a timely application to the Control Officer to request renewal of the PAL conditions in a Part 70 Operating Permit. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) prior to, the date of expiration of the Part 70 Operating Permit containing the PAL. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL conditions in a Part 70 Operating Permit within this time period, then the PAL conditions shall continue to be effective until the revised permit with the renewed PAL conditions is issued.
- (c) **Application Requirements.** The application to renew PAL conditions shall be incorporated into the application for renewal of the affected Part 70 Operating Permit, and shall contain the information required in paragraphs (c)(1) through (c)(4) of Section 12.2.19.10:
- (1) The information required in paragraphs (a) through (c) of Section 12.2.19.3;
 - (2) A proposed PAL level;
 - (3) The sum of the PTE of all emissions units under the PAL (with supporting documentation); and
 - (4) Any other information the owner or operator wishes the Control Officer to consider in determining the appropriate level for renewing the PAL conditions.
- (d) **PAL Adjustment.** In determining whether and how to adjust the PAL, the Control Officer will consider the options outlined in paragraphs (d)(1) and (d)(2) of this Section 12.2.19.10. However, in no case may any such adjustment fail to comply with paragraph (d)(3) of Section 12.2.19.10.
- (1) If the emissions level calculated in accordance with Section 12.2.19.6 is equal to or greater than eighty (80) percent of the PAL level, the Control Officer may renew the PAL at the same level without considering the factors set forth in paragraph (d)(2) of Section 12.2.19; or

- (2) The Control Officer may set the PAL at a level that he determines to be more representative of the source's baseline actual emissions, or that he or she determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Control Officer in his or her written rationale.
- (3) Notwithstanding paragraphs (d)(1) and (d)(2) of Section 12.2.19:
- (A) If the PTE of the major stationary source is less than the PAL, the Control Officer shall adjust the PAL to a level no greater than the PTE of the source; and
- (B) The Control Officer shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Section 12.2.19.11.
- (e) If the compliance date for a federal or state requirement that applies to the PAL source occurs during the PAL effective period, and if the Control Officer has not already adjusted for such requirement, the PAL shall be adjusted at the time the affected Part 70 Operating Permit is renewed.

12.2.19.11 Increasing a PAL during the PAL Effective Period

- (a) The Control Officer may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (a)(1) through (a)(4) of Section 12.2.19.11:
- (1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit as a significant revision to the affected Part 70 Operating Permit. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.
- (2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT-equivalent controls), plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT-equivalent controls on each significant or major emissions unit shall be determined by conducting a new

BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(3) The owner or operator obtains an Authority to Construct Permit pursuant to Section 12.4 for all emissions unit(s) identified in paragraph (a)(1) of Section 12.2.19.11, regardless of the magnitude of the emissions increase resulting from them. The emissions unit(s) shall comply with any emissions requirements resulting from the Authority to Construct Permit issuance process, even though it has also become subject to the PAL or continues to be subject to the PAL..

(4) The PAL conditions in a Part 70 Operating Permit shall require that the increased PAL level be effective on the day any emissions unit that is part of the significant permit revision becomes operational and begins to emit the PAL pollutant.

(b) The Control Officer shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT-equivalent controls as determined in accordance with paragraph (a)(2) of Section 12.2.19.11), plus the sum of the baseline actual emissions of the small emissions units.

(c) The PAL conditions in a Part 70 Operating Permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Section 12.2.19.5.

12.2.19.12 Monitoring Requirements for PALs

(a) General Requirements

(1) The PAL conditions in a Part 70 Operating Permit must include enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL conditions must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL conditions.

- (2) The PAL monitoring system must employ one (1) or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraphs (b)(1) through (b)(4) of Section 12.2.19.12, and must be approved by the Control Officer.
- (3) Notwithstanding paragraph (a)(2) of Section 12.2.19.12, the PAL monitoring system may also employ an alternative monitoring approach that meets paragraph (a)(1) of Section 12.2.19.12 if approved by the Control Officer.
- (4) Failure to use a monitoring system that meets the requirements of Section 12.2.19 renders the PAL invalid.

(b) **Minimum Performance Requirements for Approved Monitoring Approaches.** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (c) through (i) of Section 12.2.19.12:

- (1) Mass balance calculations for activities using coatings or solvents;
- (2) CEMS;
- (3) CPMS or PEMS; and
- (4) Emission factors.

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

- (1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in, or created by all materials used in or at, the emissions unit;
- (2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
- (3) Where the vendor of a material or fuel which is used in or at the emissions unit publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Control Officer determines there is site-specific data or a site-specific monitoring program to support another content within the range.

- (d) **CEMS.** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
- (1) The CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and
 - (2) The CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.
- (e) **CPMS or PEMS.** An owner or operator using a CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
- (1) The CPMS or PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
 - (2) Each CPMS or PEMS must sample, analyze, and record data at least every fifteen (15) minutes, or at another, less frequent interval approved by the Control Officer, while the emissions unit is operating.
- (f) **Emission Factors.** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
- (1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
 - (2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
 - (3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of permit issuance unless the Control Officer determines that testing is not required.
- (g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the Authority to Construct Permit.

- (h) Notwithstanding the requirements in paragraphs (c) through (g) of Section 12.2.19.12, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Control Officer shall, at the time of permit issuance:
- (1) Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or
 - (2) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
- (i) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the Control Officer. Such testing must occur at least once every five (5) years after issuance of the Part 70 Operating Permit containing the PAL conditions.

12.2.19.13 Recordkeeping Requirements

- (a) The PAL conditions in a Part 70 Operating Permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Section 12.2.19 and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five (5) years from the date of such record.
- (b) The PAL conditions in a Part 70 Operating Permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:
- (1) A copy of the PAL provisions in a permit application for a Part 70 Operating Permit and any applications for revisions to the affected Part 70 Operating Permit relevant to the PAL; and
 - (2) Each annual certification of compliance pursuant to the conditions in the affected Part 70 Operating Permit and the data relied on in certifying the compliance.

12.2.19.14 Reporting and Notification Requirements

The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the Control Officer, in accordance with the conditions in the affected Part 70 Operating Permit. The reports shall meet the requirements in paragraphs (a) through (c) of Section 12.2.19.14.

(a) **Semiannual Report.** The semiannual report shall be submitted to the Control Officer within thirty (30) days of the end of each reporting period. This report shall contain the information required in paragraphs (a)(1) through (7) of Section 12.2.19.14:

- (1) The identification of the owner and operator and the permit number;
- (2) Total annual emissions (in tpy), based on a 12-month rolling total for each month in the reporting period recorded pursuant to paragraph (a) of Section 12.2.19.14;
- (3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;
- (4) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period;
- (5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;
- (6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph (g) of Section 12.2.19.12; and
- (7) A signed statement by the responsible official certifying the truth, accuracy, and completeness of the information provided in the report.

(b) **Deviation Report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL conditions, including periods where no monitoring was available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the affected Part 70 Operating Permit. The reports shall contain the following information:

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

- (2) The PAL requirement that experienced the deviation or that was exceeded;
 - (3) Emissions resulting from the deviation or the exceedance; and
 - (4) A signed statement by the responsible official certifying the truth, accuracy, and completeness of the information provided in the report.
- (c) **Revalidation Results.** The owner or operator shall submit to the Control Officer the results of any revalidation test or method within three (3) months after completion of such test or method.

12.2.19.15 Transition Requirements

- (a) The Control Officer may not issue a PAL that does not comply with the requirements in Sections 12.2.19.1 through 12.2.19.15 after the Administrator has approved regulations incorporating these requirements into the Nevada SIP.
- (b) The Control Officer may supersede any PAL which was established prior to the date of approval of the Nevada SIP by the Administrator with a PAL that complies with the requirements of Sections 12.2.19.1 through 12.2.19.15.

12.2.20 Invalidation

If any provision of Section 12.2.19, or the application of such provision to any person or circumstance, is held invalid, the remainder of Section 12.2.19, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**SECTION 12.3: PERMIT REQUIREMENTS FOR MAJOR SOURCES IN
NONATTAINMENT AREAS**

12.3	Permit Requirements for Major Sources in Nonattainment Areas.....	1
12.3.1	Applicability Procedures.....	1
12.3.1.1	Preconstruction Review Requirements.....	1
12.3.1.2	Construction of Major Sources or Modifications.....	1
12.3.1.3	Authority to Construct Permit Requirement.....	1
12.3.1.4	Projects.....	1
12.3.1.5	Major Sources with Plantwide Applicability Limitations.....	2
12.3.1.6	Existing Emission Unit Projects.....	2
12.3.1.7	Availability of Information.....	4
12.3.1.8	Secondary Emissions.....	4
12.3.2	Definitions.....	4
12.3.3	Statewide Compliance.....	23
12.3.4	Analysis of Alternatives.....	23
12.3.5	Lowest Achievable Emission Rate.....	23
12.3.5.1	Applicable Requirements.....	23
12.3.5.2	Permit Requirements to Achieve LAER.....	23
12.3.6	Emissions Offset.....	24
12.3.6.1	Sufficiency of Reductions.....	24
12.3.6.2	Offset Methods.....	24
12.3.6.3	Restrictions on Trading Pollutants.....	24
12.3.6.4	Timing.....	25
12.3.6.5	Quantity.....	25
12.3.6.6	Emission Reduction Requirements.....	26
12.3.6.7	Location of Internal Reductions.....	27
12.3.6.8	Emission Reduction Credit Requirements.....	27
12.3.6.9	ERC Registry.....	28
12.3.7	Source Obligation.....	28
12.3.7.1	Enforcement.....	28
12.3.7.2	Termination.....	28
12.3.7.3	Compliance.....	28
12.3.7.4	Relaxation in Enforceable Limitations.....	28
12.3.8	Public Participation.....	29
12.3.9	Plantwide Applicability Limits (PAL).....	29
12.3.9.1	Applicability.....	29
12.3.9.2	Definitions.....	29
12.3.9.3	Permit Application Requirements.....	31
12.3.9.4	General Requirements for Establishing PALs.....	31
12.3.9.5	Public Participation Requirements for PALs.....	32
12.3.9.6	Setting the 10-year Actuals PAL Level.....	32
12.3.9.7	Part 70 Operating Permits with PALs.....	33
12.3.9.8	PAL Effective Period and Reopening of PAL Conditions.....	34
12.3.9.9	Expiration of a PAL.....	35

	12.3.9.10 Renewal of a PAL	36
	12.3.9.11 Increasing a PAL during the PAL Effective Period	38
	12.3.9.12 Monitoring Requirements for PALs	39
	12.3.9.13 Recordkeeping Requirements	42
	12.3.9.14 Reporting and Notification Requirements	42
	12.3.9.15 Transition Requirements	43
12.3.10	Potential Visibility Impacts	44
12.3.11	Invalidation	44

LIST OF TABLES

Table 12.3-1.	<u>Federal Offset Ratio Requirements by Area Designation and Pollutant.....</u>	<u>26</u>
---------------	---------------------------------------------------------------------------------	-----------

12.3 Permit Requirements for Major Sources in Nonattainment Areas

12.3.1 Applicability Procedures

12.3.1.1 Preconstruction Review Requirements

The preconstruction review requirements of Section 12.3 shall apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as nonattainment for any National Ambient Air Quality Standard under Section 107(d)(1)(B) of the Act [42 USC § 7407(d)(1)(B)].

12.3.1.2 Construction of Major Sources or Modifications

The requirements of Sections 12.3.3 through 12.3.8 apply to the construction of any new major stationary source or the major modification of any existing major stationary source if the stationary source or modification is major for the regulated NSR pollutant for which the area is designated nonattainment under 40 CFR Part 81, except as Section 12.3 otherwise provides.

12.3.1.3 Authority to Construct Permit Requirement

No new major stationary source or major modification to which the requirements of Sections 12.3.3 through 12.3.8 apply shall begin actual construction without an Authority to Construct Permit issued pursuant to Section 12.4 that states that the major stationary source or major modification will meet those requirements.

12.3.1.4 Projects

The requirements of Section 12.3.1.4 apply to projects at major stationary sources in accordance with the principles set out in paragraphs (a) through (e) of Section 12.3.1.4.

(a) Except as otherwise provided in Section 12.3.1.5, a project is a major modification for a regulated NSR pollutant if it causes two (2) types of emissions increases: a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(b) The procedure for calculating (before beginning actual construction) whether a significant emissions increase will occur depends upon the type of emissions units being added or modified as part of the pro-

ject, according to paragraphs (c) through (e) of Section 12.3.1.4. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

- (c) **Actual-to-Projected-Actual Applicability Test for Projects that Only Involve Existing Emissions Units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
- (d) **Actual-to-Potential Test for Projects that Only Involve Construction of a New Emissions Unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the PTE from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
- (e) **Hybrid Test for Projects that Involve Multiple Types of Emissions Units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs (c) or (d) of Section 12.3.1.4, as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.

12.3.1.5 Major Sources with Plantwide Applicability Limitations

For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements in Section 12.3.9.

12.3.1.6 Existing Emission Unit Projects

The provisions of this paragraph apply when a project occurs at an existing emissions unit at a major stationary source, other than a source with a PAL; the project is not a part of a major modification; and the owner or operator elects to use the method specified in paragraphs (1)(A) through (1)(D) of the definition of projected actual emissions.

- (a) Before beginning actual construction of the project, and as a condition of the source's Authority to Construct Permit, the owner or op-

erator shall document and maintain a record of the following information:

- (1) A description of the project;
 - (2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
 - (3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph (1)(D) of the definition of projected actual emissions and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- (b) If the emissions unit is an existing emissions unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph (a) of Section 12.3.1.6 to the Control Officer. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the Control Officer before beginning actual construction, except such owner or operator may still be subject to the requirements of Section 12.1, Section 12.4, or other applicable requirements.
- (c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that are emitted by any emissions unit identified in paragraph (a)(2) of Section 12.3.1.6; and calculate and maintain a record of the annual emissions (in tpy) for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity of, or potential to emit that regulated NSR pollutant at, any emissions unit.
- (d) If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Control Officer within sixty (60) days after the end of each calendar year during which records must be generated under paragraph (c) of Section 12.3.1.6 setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (e) If the emissions unit is an existing emissions unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Control Officer if the annual emissions, in tpy, from the project identified in paragraph (a) of Section 12.3.1.6 exceed the baseline actual emissions (as documented and maintained pursuant

to paragraph (a)(3) of Section 12.3.1.6), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the projected actual emissions (prior to exclusion of the amount of emissions under the definition of projected actual emissions) as documented and maintained pursuant to paragraph (a)(3) of Section 12.3.1.6. Such report shall be submitted to the Control Officer within sixty (60) days after the end of such year. The report shall contain the following:

- (1) The name, address, and telephone number of the major stationary source;
- (2) The annual emissions, as calculated pursuant to paragraph (c) of Section 12.3.1.6; and
- (3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

12.3.1.7 Availability of Information

The owner or operator of the source shall make the information required to be documented and maintained pursuant to Section 12.3.1.6 available for review upon a request for inspection by the Control Officer.

12.3.1.8 Secondary Emissions

Secondary emissions shall not be considered in determining whether a stationary source would qualify as a major stationary source. If a stationary source is subject to Section 12.3 on the basis of the direct emissions from the stationary source, the requirements of Section 12.3.6, but no other provisions of Section 12.3, must also be met for secondary emissions.

12.3.2 Definitions

Unless the context otherwise requires, the following terms shall have the meanings set forth below for the purposes of Section 12.3. When a term is not defined in these paragraphs, it shall have the meaning given in Section 0, or in the Act, in that order of priority.

- (a) "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with this definition.
 - (1) In general, actual emissions as of a particular date shall equal the average rate, in tpy, at which the emissions unit actually emitted the regulated NSR pollutant during a consecutive 24-month period which precedes the particular date and which is

representative of normal source operation. The Control Officer shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

- (2) The Control Officer may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
- (3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the PTE of the unit on that date.
- (4) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Section 12.3.9. Instead, projected actual emissions and baseline actual emissions shall apply for those purposes.

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

- (1) Any applicable standards set forth in these AQRs and 40 CFR Parts 60, 61, or 63;
- (2) Any applicable emission limitation in the Nevada SIP, including those with a future compliance date; or
- (3) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(c) "Baseline actual emissions" means the rate of emissions, in tpy, of a regulated NSR pollutant, as determined in accordance with paragraphs (c)(1) through (c)(4) of this definition.

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

- (A) The average rate shall include fugitive emissions, to the extent quantifiable, and emissions associated with startups and shutdowns, except emissions from a shutdown associated with a malfunction.
- (B) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
- (C) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must comply as of the particular date, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. For the purposes of determining baseline actual emissions for contemporaneous changes pursuant to paragraph (1)(B) of the definition of net emissions increase, the particular date is the date on which the particular change occurred. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state of Nevada has taken credit for such emissions reductions in an attainment demonstration or maintenance plan, consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
- (D) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
- (E) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tpy, and for adjusting this amount if required by this definition.
- (2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tpy, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit appli-

ation is received by the Control Officer for a permit required under these AQRs, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

- (A) The average rate shall include fugitive emissions to the extent quantifiable.
- (B) The average rate shall include emissions associated with startups and shutdowns, except emissions from a shutdown associated with a malfunction.
- (C) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
- (D) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must comply as of a particular date, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. For the purposes of determining baseline actual emissions for contemporaneous changes pursuant to paragraph (1)(B) of the definition of net emissions increase, the particular date is the date on which the particular change occurred. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the State of Nevada has taken credit for such emissions reductions in an attainment demonstration or maintenance plan, consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
- (E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
- (F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tpy, and for adjusting this amount if required by paragraphs (2)(B) and (2)(C) of this definition.

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

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph (1) of this definition; for other existing emissions units, in accordance with the procedures contained in paragraph (2) of this definition; and for a new emissions unit, in accordance with the procedures contained in paragraph (3) of this definition.

(d) "Basic design parameter" means:

(1) Except as provided in paragraph (3) of this definition, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on Btu content shall be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(2) Except as provided in paragraph (3) of this definition, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

(3) If the owner or operator believes the basic design parameter(s) in paragraphs (1) and (2) of this definition is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Control Officer an alternative basic design parameter(s) for the source's process unit(s). If the Control Officer approves of the use of an alternative basic design parameter(s), the Control Officer shall issue a permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

- (4) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in paragraphs (1) and (2) of this definition.
- (5) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the 5-year period immediately preceding the planned activity.
- (6) Efficiency of a process unit is not a basic design parameter.
- (7) The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.
- (e) "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.
- (f) "Best Available Control Technology (BACT)" means an emission limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Control Officer, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the Control Officer determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set

forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

- (g) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same SIC or NAICS code) as described in either the *Standard Industrial Classification (SIC) manual, 1972, as amended by the 1977 supplement* or the *North American Industry Classification System (NAICS) manual.*
- (h) "Categorical stationary source" means any stationary source of air pollutants that belongs to one of the following categories of stationary sources:
- (1) Fossil fuel-fired steam electric plants of more than 250 million Btu per hour heat input;
 - (2) Coal cleaning plants (with thermal dryers);
 - (3) Kraft pulp mills;
 - (4) Portland cement plants;
 - (5) Primary zinc smelters;
 - (6) Iron and steel mills;
 - (7) Primary aluminum ore reduction plants;
 - (8) Primary copper smelters;
 - (9) Municipal incinerators capable of charging more than 50 tons of refuse per day;
 - (10) Hydrofluoric, sulfuric, or nitric acid plants;
 - (11) Petroleum refineries;
 - (12) Lime plants;
 - (13) Phosphate rock processing plants;
 - (14) Coke oven batteries;

- (15) Sulfur recovery plants;
 - (16) Carbon black plants (furnace process);
 - (17) Primary lead smelters;
 - (18) Fuel conversion plants;
 - (19) Sintering plants;
 - (20) Secondary metal production plants;
 - (21) Chemical process plants;
 - (22) Fossil-fuel boilers (or combination thereof) totaling more than 250 million Btu per hour heat input;
 - (23) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (24) Taconite ore processing plants;
 - (25) Glass fiber processing plants;
 - (26) Charcoal production plants; and
 - (27) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Act.
- (i) "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.
- (j) "Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least twenty (20) percent of the total cost of the demonstration project.
- (k) "Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all nec-

essary preconstruction approvals or permits, including an Authority to Construct Permit, and either has:

- (1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
 - (2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source, to be completed within a reasonable time.
- (l) "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Control Officer from requesting or accepting any additional information.
- (m) "Construction" means any physical change, or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit), that would result in a change in emissions.
- (n) "Continuous Emissions Monitoring System (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of Section 12.3, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.
- (o) "Continuous Emissions Rate Monitoring System (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
- (p) "Continuous Parameter Monitoring System (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of Section 12.3, to monitor process and control device operational parameters and other information and to record average operational parameter value(s) on a continuous basis.
- (q) "Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity, and more than 25 MW of electrical output, to any utility power distribution system. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

- (r) "Emission Reduction Credit (ERC)" means a unit of emission reduction (in tpy) that has been issued by the Control Officer in accordance with the provisions set forth in Sections 12.3.6 and 12.7.
- (s) "Emissions Unit" means any part of a stationary source that emits, or would have the potential to emit, any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of Section 12.3, there are two types of emissions units as described in paragraphs (1) and (2) of this definition:
- (1) A "new emissions unit" is any emissions unit which is (or will be) newly constructed and which has existed for less than two (2) years from the date such emissions unit first operated. For the purposes of this definition, the date an emissions unit first operated shall not be extended by any shakedown period established pursuant to paragraph (aa)(6) of Section 12.3.2.
- (2) An "existing emissions unit" is any emissions unit that does not meet the requirements in paragraph (1) of this definition. A replacement unit is an existing emissions unit.
- (t) "Federally Enforceable" means all limitations and conditions which are enforceable by the Administrator.
- (u) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the Department with authority over such lands.
- (v) "Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (w) "Lowest Achievable Emission Rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:
- (1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed major stationary source demonstrates that such limitations are not achievable; or
- (2) The most stringent emission limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a major modification, means the LAER for the new or modified emissions units within the stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollut-

ant in excess of the amount allowable under an applicable new source standard of performance.

For purposes of this definition only, the term "any state" means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa, and includes the Commonwealth of the Northern Mariana Islands.

- (x) "Major Modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.
- (1) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.
 - (2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for nitrogen oxides shall be considered significant for ozone unless EPA has granted a waiver for nitrogen oxides emissions under Section 182(f) of the Act and the waiver continues to apply.
 - (3) A physical change or change in the method of operation shall not include:
 - (A) Routine maintenance, repair, and replacement;
 - (B) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
 - (C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;
 - (D) Use of an alternative fuel at a steam generating unit, to the extent that the fuel is generated from municipal solid waste;
 - (E) Use of an alternative fuel or raw material by a stationary source which:

- (i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to Section 12 or under regulations approved pursuant to 40 CFR Part 51, Subpart I.
 - (ii) The source is approved to use under any permit issued under Section 12.
- (F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976;
- (G) Any change in ownership at a stationary source;
- (H) The installation, operation, cessation, or removal of a Temporary Clean Coal Technology Demonstration Project, provided that the project complies with:
 - (i) The Nevada SIP; and
 - (ii) Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.
- (I) The installation or operation of a permanent Clean Coal Technology Demonstration Project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or
- (J) The reactivation of a very clean coal-fired electric utility steam generating unit.
- (4) This definition shall not apply with respect to a particular regulated NSR pollutant when the Major Stationary Source is complying with the requirements under Section 12.3.9 for a PAL for that regulated NSR pollutant. Instead, the definition of PAL major modification shall apply.
- (5) The fugitive emissions of a major stationary source shall not be included in determining, for any of the purposes of Section 12.3, whether a particular physical change or change in the method of operation is a major modification unless the major stationary source is a categorical stationary source or belongs to any other

stationary source category which, as of August 7, 1980, was being regulated under Section 111 or 112 of the Act.

(v) "Major Stationary Source" means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tpy or more of any regulated NSR pollutant except:

(A) For an area designated nonattainment for PM₁₀ and classified as "serious," a major stationary source is a stationary source which emits, or has the potential to emit, seventy (70) tpy or more of PM₁₀.

(B) A major stationary source is a stationary source which emits, or has the potential to emit, fifty (50) tpy or more in an area classified as "serious" nonattainment for CO where stationary sources significantly contribute to ambient CO levels, as determined under regulations issued by EPA pursuant to the Act.

(C) For an area designated nonattainment for ozone, a source with the potential to emit VOC or NO_x in the following amounts shall be considered a major stationary source:

(i) ≥100 tpy in areas classified as "marginal" or "moderate";

(ii) ≥50 tpy in areas classified as "serious";

(iii) ≥25 tpy in areas classified as "severe"; and

(iv) ≥10 tpy in areas classified as "extreme."

(2) Any physical change that would occur at a stationary source not qualifying as a major stationary source under paragraph (1) of this definition, if the change would constitute a major stationary source by itself under paragraph (1).

(A) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(B) A major stationary source that is major for nitrogen oxides shall be considered major for ozone, unless EPA has granted a waiver for nitrogen oxides emissions under Section 182(f) of the Act and the waiver continues to apply.

- (3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of Section 12.3 whether it is a major stationary source, unless the source is a categorical stationary source or belongs to any other stationary source category which, as of August 7, 1980, was being regulated under Section 111 or 112 of the Act.
- (z) "Necessary preconstruction approvals or permits" means those permits or approvals required under air quality control laws and regulations that are part of the Nevada SIP, these AQRs, or federal air quality control laws and regulations, including the Authority to Construct Permits issued pursuant to Section 12.4.
- (aa) "Net Emissions Increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the following:
- (1) The amount by which the sum of the following exceeds zero:
- (A) The increase in emissions from a particular physical change, or change in the method of operation, at a stationary source as calculated pursuant to paragraphs (a) through (e) of Section 12.3.1.4; and
- (B) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.
- (i) For the purposes of calculating increases and decreases under paragraph (1)(B) of this definition, baseline actual emissions prior to the contemporaneous project shall be determined as provided in the definition of baseline actual emissions, except that paragraphs (1)(D) and (2)(E) of that definition shall not apply.
- (ii) For the purposes of calculating increases under paragraph (1)(B) of this definition, actual emissions after the contemporaneous project shall be determined as provided in the definition of actual emissions, except as provided in paragraph (1)(E) of this definition.
- (iii) For the purposes of calculating increases under paragraph (1)(B) of this definition, if the Control Officer determines that there is no sufficiently representative time period of actual emissions after a contemporaneous project, pursuant to paragraph (a)(1) of Section 12.3.2, actual emissions after the con-

temporaneous project shall be determined as provided in the definition of projected actual emissions.

- (iv) For the purposes of calculating decreases under paragraph (1)(B) of this definition, actual emissions after the contemporaneous project shall be determined as provided in the definition of actual emissions.
- (2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five (5) years before construction on the particular change commences and the date that the increase from the particular change occurs.
- (3) An increase or decrease in actual emissions is creditable only if the Control Officer has not relied on it in issuing a permit for the source under Section 12, or any other regulation approved by the Administrator pursuant to 40 CFR Part 51 or 40 CFR Part 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs.
- (4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- (5) A decrease in actual emissions is creditable only to the extent that:
- (A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
 - (B) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
 - (C) The Control Officer has not relied on it in issuing any permit under Section 12 or any other regulations approved pursuant to 40 CFR Part 51, Subpart I, nor has the state of Nevada relied on it in demonstrating attainment or reasonable further progress; and
 - (D) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

Any replacement unit that requires shakedown, or any new emissions unit that replaces an existing emissions unit and that requires shakedown, becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

- (bb) "Nonattainment Major New Source Review (NSR) Program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the Nevada SIP, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major NSR permit.
- (cc) "Permanent" means an emission reduction which is federally enforceable for the life of a corresponding increase in emissions. For federal Emission Reduction Credits (ERCs), emission reductions for a stationary source are permanent if the reductions are federally enforceable and the reductions occur over the duration of the ERC rule.
- (dd) "Potential to Emit (PTE)" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the types or amounts of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the PTE of a stationary source.
- (ee) "Predictive Emissions Monitoring System (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters and other information, and calculate and record the mass emissions rate on a continuous basis.
- (ff) "Prevention of Significant Deterioration (PSD) Permit" means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the Nevada SIP to implement the requirements of Part C, Subchapter I of the Act.
- (gg) "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.
- (hh) "Projected Actual Emissions" means the maximum annual rate, in tpy, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five (5) years (12-month period) following the date the unit resumes regular operation after the pro-

ject, or in any one of the ten (10) years following that date, if the project involves increasing the design capacity or PTE of any emissions unit for that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(1) In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(A) Shall consider all relevant information, including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the county, state or federal regulatory authorities, and compliance plans under these AQRs;

(B) Shall include fugitive emissions to the extent quantifiable;

(C) Shall include emissions associated with startups and shutdowns, except emissions from a shutdown associated with a malfunction; and

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

(2) In lieu of using the method set out in paragraphs (1)(A) through (1)(D) of this definition, the owner or operator of the major stationary source may elect to use the emissions unit's PTE in tpy.

(ii) "Regulated NSR Pollutant," for purposes of Section 12.3, means:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a National Ambient Air Quality Standard has been promulgated and any constituents or precursors identified by the Administrator; or

(3) Any pollutant that is a constituent or precursor of a general pollutant listed under paragraphs (1) or (2) of this definition, pro-

vided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

(ii) "Replacement Unit" means an emissions unit for which all the criteria listed in paragraphs (1) through (4) of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced. The criteria are:

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

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

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

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

(kk) "Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of Section 12.3, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(ll) "Shutdown" means the cessation of operation of any air pollution control equipment or process equipment for any purpose except routine phasing out of process equipment.

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

(1) Carbon monoxide:

- (A) 100 tpy; or
- (B) 50 tpy in an area designated nonattainment for CO and classified as "serious," and where stationary sources significantly contribute to ambient CO levels as determined under regulations issued by EPA pursuant to the Act.
- (2) Nitrogen oxides: 40 tpy;
- (3) Sulfur dioxide: 40 tpy;
- (4) Ozone:
 - (A) 40 tpy of VOCs; or
 - (B) 40 tpy of nitrogen oxides, unless EPA has granted a waiver for nitrogen oxides emissions under Section 182(f) of the Act and the waiver continues to apply.
- (5) PM₁₀: 15 tpy;
- (6) PM_{2.5}: 10 tpy of direct PM_{2.5} emissions or 40 tpy of sulfur dioxide emissions or 40 tpy of nitrogen dioxide emissions; and
- (7) Lead: 0.6 tpy.
- (nn) "Significant Emissions Increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.
- (oo) "Startup" means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.
- (pp) "Stationary Source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.
- (qq) "Surplus" means an emission reduction that has not been relied on in any air quality program related to any SIP, that is not a Nevada SIP requirement, that is not a requirement of a state air quality program that has been adopted but is not in the Nevada SIP, is not credited in any federal reasonable further progress or other milestone demonstration, is not a requirement of a consent decree, is not a requirement of a federal rule that focuses on reducing criteria air pollutants or their precursors, and has not already been credited in any other air quality program. The purpose of requiring that emissions offsets be surplus is to prohibit double-counting of emission reductions.

- (rr) "Temporary Clean Coal Technology Demonstration Project" means a Clean Coal Technology Demonstration Project that is operated for a period of five (5) years or less, and which complies with the SIP for the state in which the project is located and with other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

12.3.3 Statewide Compliance

Prior to issuance of an Authority to Construct Permit for a new major stationary source or major modification subject to Section 12.3, the applicant shall either demonstrate that each existing major stationary source owned or operated by the applicant in the state of Nevada is in compliance with all applicable emission limitations and standards under the Act or is in compliance with an expeditious schedule which is federally enforceable or contained in a court decree.

12.3.4 Analysis of Alternatives

Prior to issuance of an Authority to Construct Permit for a new major stationary source or major modification subject to Section 12.3, the applicant shall submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates, to the satisfaction of the Control Officer, that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

12.3.5 Lowest Achievable Emission Rate

12.3.5.1 Applicable Requirements

A major stationary source or major modification shall meet each applicable requirement.

12.3.5.2 Permit Requirements to Achieve LAER

An Authority to Construct Permit for a new major stationary source or major modification shall contain terms and conditions sufficient to ensure that the major stationary source or major modification will achieve LAER in accordance with paragraphs (a) and (b) of Section 12.3.5.2:

- (a) A new major stationary source shall achieve LAER for each regulated NSR pollutant that it would have the potential to emit in significant amounts.
- (b) A major modification shall achieve LAER for each regulated NSR pollutant for which it would result in a significant net emissions increase

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

12.3.6 Emissions Offset

12.3.6.1 Sufficiency of Reductions

Prior to issuance of an Authority to Construct Permit for a new major stationary source or major modification, the Control Officer shall make a determination that, by the time the source is to commence operation, sufficient offsetting emissions reductions will be surrendered prior to commencing operation, such that allowable emissions from existing sources in the nonattainment area, from new or modified sources which are not major stationary sources, and from the proposed source or modification will be sufficiently less than total emissions from existing sources prior to the application for the offset. At a minimum, this determination requires the applicant to satisfy the offset requirements in Section 12.3.6.2.

12.3.6.2 Offset Methods

Pollutant-specific emissions shall be offset with federally enforceable ERCs or with internal emission reductions.

- (a) ERCs from one or more sources may be used, alone or in combination with internal emission reductions, in order to satisfy offset requirements.
- (b) Internal emission reductions used to satisfy offset requirements shall be governed by Sections 12.3.6.3 through 12.3.6.8 and Section 12.7.
- (c) ERCs used to satisfy offset requirements shall be governed by Sections 12.3.6.3 through 12.3.6.6, Section 12.3.6.8, and Section 12.7.

12.3.6.3 Restrictions on Trading Pollutants

- (a) Pursuant to the Nevada Revised Statutes, Section 445.B.508 (2)(c), purchasing or selling credits of one type of pollutant is prohibited if such credits would be used subsequently to produce a different type of pollutant.
- (b) For the purposes of satisfying the offset requirements with respect to ozone, offsetting of VOC emissions increases with NO_x emissions decreases, or NO_x emissions increases with VOC emissions decreases, shall not be prohibited trading.

- (c) For the purposes of satisfying the offset requirements with respect to PM_{2.5}, offsetting of PM_{2.5} emissions increases with SO₂ or NO_x emissions decreases, or SO₂ or NO_x emissions increases with PM_{2.5} decreases, shall not be prohibited trading.

12.3.6.4 **Timing**

- (a) Internal emission reductions used to satisfy an offset requirement must be federally enforceable at the time of issuance of the Authority to Construct Permit containing the offset requirements.
- (b) Except as provided by paragraph (c) of Section 12.3.6.4, the decrease in actual emissions used to generate ERCs or internal emission reductions must occur by no later than the commencement of operation of the new or modified major stationary source.
- (c) Where the new facility is a replacement for a facility that is being shut down in order to provide the necessary offsets, the Control Officer may allow up to one hundred eighty (180) calendar days for shake-down or commissioning of the new facility before the existing facility is required to cease operation.

12.3.6.5 **Quantity**

The quantity of ERCs or internal emission reductions required to satisfy offset requirements shall be determined in accordance with the following:

- (a) The unit of measure for offsets, ERCs, and internal emission reductions shall be tpy. All calculations and transactions shall use emission rate values rounded to the nearest one one-hundredth (0.01) tpy.
- (b) The quantity of ERCs or internal emission reductions required shall be calculated as the product of the amount of increased emissions, as determined in accordance with paragraph (c) of Section 12.3.6.5, and the offset ratio, as determined in accordance with paragraph (d) of Section 12.3.6.5.
- (c) The amount of increased emissions shall be determined as follows:
- (1) The amount of increased emissions includes fugitive emissions in the case of all major stationary sources, including categorical sources.
 - (2) When the offset requirement is triggered by the construction of a new major stationary source, the amount of increased emissions shall be the sum of the PTE of all emissions units.

(3) When the offset requirement is triggered by a major modification of an existing major stationary source, the amount of increased emissions shall be the sum of the differences between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

(d) The offset ratio shall be expressed as a ratio of emissions reductions to emissions increases.

(1) The following table contains offset ratios by designated area and pollutant.

(2) The ratios listed in Table 12.3-1 shall be applied based on the classifications contained in the table for a specific pollutant.

Table 12.3-1. Federal Offset Ratio Requirements by Area Designation and Pollutant

<u>Area Designation</u>	<u>Pollutant</u>	<u>Offset Ratio</u>
<u>Nonattainment without Designation</u>	<u>NO_x</u>	<u>1:1</u>
	<u>VOC</u>	<u>1:1</u>
<u>Serious Nonattainment Area</u>	<u>CO</u>	<u>1:1</u>
	<u>PM₁₀</u>	<u>1:1</u>

(e) The major stationary source shall be given credit for any portion of the NEI that was previously offset. A pre-modification PTE may only include fugitive emissions if the fugitive emissions were included in the emissions inventory prior to the modification.

12.3.6.6 Emission Reduction Requirements

Emission reductions used to satisfy an offset requirement shall meet the following requirements:

(a) Emission reductions used to satisfy offset requirements must be real, surplus, permanent, quantifiable, and federally enforceable.

(b) Permitted sources whose internal emission reductions are used to satisfy offset requirements must appropriately amend or cancel their Authority to Construct Permit and/or Part 70 Operating Permit to reflect their new reduced PTE, including practicably enforceable conditions to limit their PTE.

(c) Emission reductions used to satisfy offset requirements must be surplus at the time of issuance of the Authority to Construct Permit containing the offset requirements.

12.3.6.7 Location of Internal Reductions

Internal emission reductions used to satisfy offset requirements shall occur at the same major stationary source at which the increase in emissions occurs. Emission reductions not meeting this criterion shall meet the requirements for ERCs prescribed by Section 12.7.

12.3.6.8 Emission Reduction Credit Requirements

ERCs used to satisfy an offset requirement shall meet the following requirements:

- (a) Restrictions on offsetting emissions between airshed regions:

 - (1) Except as provided by paragraph (a)(2) of Section 12.3.6.8, offsetting emissions from a source located within an airshed region with ERCs from a source located in a different airshed region shall not be allowed.
 - (2) The Control Officer may approve the use of NO_x and VOC ERCs between airshed regions for the same nonattainment area within the Clark County boundary to satisfy NO_x and VOC offset requirements for that nonattainment area.
- (b) The source owner or responsible official utilizing ERCs to satisfy offsets must demonstrate to the satisfaction of the Control Officer that such utilization will not significantly cause or contribute to a violation of a National Ambient Air Quality Standard or an exceedance of a PSD increment identified in Section 12.2.
- (c) The use of ERCs shall not provide:

 - (1) Authority for, or the recognition of, any pre-existing vested right to emit any regulated NSR pollutant;
 - (2) An exemption to a stationary source for emission limitations established in accordance with New Source Performance Standards pursuant to Section 14;
 - (3) Authority for, or the recognition of, any rights that would be contrary to applicable law; or
 - (4) An exemption to a stationary source from any other air pollution control requirements of federal, state, or county laws, rules, and regulations.

12.3.6.9 **ERC Registry**

- (a) The ERC Registry and its use shall not interfere with the attainment or maintenance of any National Ambient Air Quality Standard.
- (b) The ERC Registry and its use shall assure that the use of ERCs does not contravene applicable requirements of the Act and Nevada Revised Statutes (NRS) Chapter 445B.

12.3.7 **Source Obligation**

12.3.7.1 **Enforcement**

Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to Section 12.3 or 12.4 and any changes to the application as required by the Control Officer, or with the terms of its Authority to Construct Permit, or any owner or operator of a source or modification subject to Section 12.3 who begins actual construction after the effective date of these AQRs without applying for and receiving an Authority to Construct Permit, shall be subject to enforcement action.

12.3.7.2 **Termination**

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

12.3.7.3 **Compliance**

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

12.3.7.4 **Relaxation in Enforceable Limitations**

At such time that a particular 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 stationary source or modification otherwise to emit a pollutant, then the requirements of Sections 12.3.3 through 12.3.7 shall apply

to the stationary source or modification as though construction had not yet commenced on the stationary source or modification.

12.3.8 Public Participation

Issuance of an Authority to Construct Permit pursuant to Section 12.3 and Section 12.4 shall be subject to the public participation requirements in Section 12.2.16.

12.3.9 Plantwide Applicability Limits (PAL)

12.3.9.1 Applicability

(a) The Control Officer may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in Sections 12.3.9.1 through 12.3.9.15. The term "PAL" shall mean "actuals PAL" throughout Section 12.3.9.

(b) Any physical change in, or change in the method of operation of, a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of Sections 12.3.9.1 through 12.3.9.14, and complies with the PAL conditions in its Part 70 Operating Permit:

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

(2) Does not have to be approved through the plan's Nonattainment Major NSR Program; and

(3) Is not subject to the provisions in Section 12.3.7.4.

(c) Except as provided under paragraph (b)(3) of Section 12.3.9.1, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

12.3.9.2 Definitions

Unless the context otherwise requires, the following terms shall have the meanings set forth below for the purposes of Section 12.3.9. When a term is not defined in these paragraphs, it shall have the meaning given in Section 12.3.2, Section 0, or in the Act.

(a) "Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit, or have the potential to emit, the PAL pollutant.

- (b) "Allowable emissions" means allowable emissions as defined in paragraph (b) of Section 12.3.2, except as this definition is modified according to paragraphs (1) and (2) below:
- (1) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's PTE.
 - (2) An emissions unit's PTE shall be determined using the definition in paragraph (d)(d) of Section 12.3.2, except that the words "or enforceable as a practical matter" should be added after "Federally Enforceable."
- (c) "Major emissions unit" means:
- (1) Any emissions unit that emits, or has the potential to emit, 100 tpy or more of the PAL pollutant in an attainment area; or
 - (2) Any emissions unit that emits, or has the potential to emit, the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas.
- (d) "PAL" means an emission limitation, expressed in tpy, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with Sections 12.3.9.1 through 12.3.9.15.
- (e) "PAL effective date" generally means the date of issuance of the Part 70 Operating Permit containing the PAL conditions, or the date on which a significant permit revision containing the PAL conditions becomes effective. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
- (f) "PAL effective period" means the period beginning with the PAL effective date and ending ten (10) years later.
- (g) "PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in, or change in the method of operation of, the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
- (h) "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

- (i) "Project" means a physical change in, or change in the method of operation of, an existing stationary source.
- (j) "Significant emissions unit" means an emissions unit that emits, or has the potential to emit, a PAL pollutant in an amount that is equal to or greater than the significant level as defined in paragraph (m)(m) Section 12.3.2 or in the Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.
- (k) "Small emissions unit" means an emissions unit that emits, or has the potential to emit, the PAL pollutant in an amount less than the significant level as defined in paragraph (m)(m) Section 12.3.2 or in the Act, whichever is lower, for that PAL pollutant.

12.3.9.3 Permit Application Requirements

As part of an application for a Part 70 Operating Permit requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Control Officer for approval:

- (a) A list of all emissions units at the source designated as small, significant, or major based on their PTE. In addition, the owner or operator of the source shall indicate which, if any, federal, state or county applicable requirements, emission limitations, or work practices apply to each unit;
- (b) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction;
- (c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month, as required by paragraph (a) of Section 12.3.9.13.

12.3.9.4 General Requirements for Establishing PALs

- (a) The Control Officer may establish a PAL at a major stationary source, provided that, at a minimum, the requirements in paragraphs (a)(1) through (a)(7) of Section 12.3.9.4 are met.
 - (1) The PAL shall impose an annual emission limitation, in tpy, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first twelve (12) months of establishing a PAL, the major sta-

tionary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous twelve (12) consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first eleven (11) months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

- (2) The PAL shall be established in a Part 70 Operating Permit as a significant permit revision.
 - (3) The Part 70 Operating Permit shall contain all the requirements of Section 12.3.9.7.
 - (4) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.
 - (5) Each PAL shall regulate emissions of only one pollutant.
 - (6) Each PAL shall have a PAL effective period of ten (10) years.
 - (7) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Sections 12.3.9.12 through 12.3.9.14 for each emissions unit under the PAL through the PAL effective period.
- (b) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under Section 12.3.6 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

12.3.9.5 Public Participation Requirements for PALs

PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures in Section 12.2.16.

12.3.9.6 Setting the 10-year Actuals PAL Level

- (a) Except as provided in paragraph (b) of Section 12.3.9.6, the Actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable

significant level for the PAL pollutant under these AQRs or under the Act, whichever is lower. When establishing the actuals PAL level for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Control Officer shall specify a reduced PAL level(s) (in tons/yr) in the Part 70 Operating Permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Control Officer is aware of prior to issuance of the permit.

- (b) For newly constructed units (which does not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (a) of Section 12.3.9.6, the emissions must be added to the PAL level in an amount equal to the PTE of the units.

12.3.9.7 Part 70 Operating Permits with PALs

Contents of a Part 70 Operating Permit containing a PAL shall include the information in paragraphs (a) through (j) of Section 12.3.9.7:

- (a) The PAL Pollutant and the applicable source-wide emission limitation in tpy;
- (b) The effective date and the expiration date of the PAL conditions (PAL effective period).
- (c) Specification in the permit that if a major stationary source owner or operator applies to renew the PAL conditions in accordance with Section 12.3.9.9 before the end of the PAL effective period, then the PAL conditions shall not expire at the end of the PAL effective period. It shall remain in effect until a revised Part 70 Operating Permit is issued by the Control Officer.
- (d) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;
- (e) A requirement that, once the PAL conditions expire, the major stationary source is subject to the requirements of Section 12.3.9.9;
- (f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total, as required by paragraph (a) of Section 12.3.9.13;

- (g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Section 12.3.9.12;
- (h) A requirement to retain the records required under Section 12.3.9.13 on-site. Such records may be retained in an electronic format;
- (i) A requirement to submit the reports required under Section 12.3.9.14 by the required deadlines; and
- (j) Any other requirements that the Control Officer deems necessary to implement and enforce the PAL conditions.

12.3.9.8 PAL Effective Period and Reopening of PAL Conditions

The plan shall require the information in paragraphs (a) and (b) of Section 12.3.9.8.

- (a) PAL Effective Period. The Control Officer shall specify a PAL effective period of ten (10) years from the date of issuance.
- (b) Reopening of the PAL conditions in a Part 70 Operating Permit.
 - (1) During the PAL effective period, the plan shall require the Control Officer to reopen the PAL conditions in a Part 70 Operating Permit to:
 - (A) Correct typographical/calculation errors made in setting the PAL, or reflect a more accurate determination of emissions used to establish the PAL;
 - (B) Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under Section 12.3.6; or
 - (C) Revise the PAL to reflect an increase in the PAL as provided under Section 12.3.9.11.
 - (2) The Control Officer may reopen the PAL conditions in a Part 70 Operating Permit for the following:
 - (A) Reduce the PAL to reflect newly applicable federal requirements with compliance dates after the PAL effective date.
 - (B) Reduce the PAL consistent with any other requirement that is enforceable as a practical matter, and that the Control

Officer may impose on the major stationary source under the Nevada SIP.

- (C) Reduce the PAL if the Control Officer determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard or PSD increment violation, or to an adverse impact on an air-quality-related value that has been identified for a federal Class I area by a Federal Land Manager and for which information is available to the general public.
- (3) Except for the permit reopening in paragraph (b)(1)(A) of Section 12.3.9.8 for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out as significant permit revisions to a Part 70 Operating Permit.

12.3.9.9 Expiration of a PAL

Any PAL which is not renewed in accordance with the procedures in Section 12.3.9.10 shall expire at the end of the PAL effective period, and the requirements in paragraphs (a) through (e) of Section 12.3.9.9 shall apply.

- (a) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised Part 70 Operating Permit established according to the procedures in paragraphs (a)(1) and (a)(2) of Section 12.3.9.9.
 - (1) Within the time frame specified for PAL renewals in paragraph (b) of Section 12.3.9.10, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Control Officer) by distributing the PAL allowable emissions for the affected major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under paragraph (e) of Section 12.3.9.10, such distribution shall be made as if the PAL had been adjusted.
 - (2) The Control Officer will decide whether and how the PAL allowable emissions will be distributed and issue a revised Part 70 Operating Permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Control Officer determines is appropriate.

- (b) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Control Officer may approve the use of monitoring systems other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
- (c) Until the Control Officer issues the revised Part 70 Operating Permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph (a)(2) of Section 12.3.9.9, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
- (d) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification.
- (e) The major stationary source owner or operator shall continue to comply with any federal, state or county applicable requirements that may have applied either during the PAL effective period or prior to the PAL effective period except as provided in paragraph (b)(3) of Section 12.3.9.1.

12.3.9.10 Renewal of a PAL

- (a) The Control Officer will follow the procedures specified in Sections 12.3.9.5 and 12.5 in approving any request to renew the PAL conditions in a Part 70 Operating Permit for a major stationary source, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Control Officer.
- (b) Application deadline. A major stationary source owner or operator shall submit a timely application to the Control Officer to request renewal of the PAL conditions in a Part 70 Operating Permit. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months prior to, the date of expiration of the Part 70 Operating Permit. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL conditions in a Part 70 Operating Permit within this time period, then the PAL conditions shall continue to be effective until the revised permit with the renewed PAL conditions is issued.

(c) **Application Requirements.** The application to renew PAL conditions shall be incorporated in the application for renewal of the affected Part 70 Operating Permit and shall contain the information required in paragraphs (c)(1) through (c)(4) of Section 12.3.9.10:

- (1) The information required in paragraphs (a) through (c) of Section 12.3.9.3;
- (2) A proposed PAL level;
- (3) The sum of the PTE of all emissions units under the PAL (with supporting documentation); and
- (4) Any other information the owner or operator wishes the Control Officer to consider in determining the appropriate level for renewing the PAL conditions.

(d) **PAL Adjustment.** In determining whether and how to adjust the PAL, the Control Officer will consider the options outlined in paragraphs (d)(1) and (d)(2) of Section 12.3.9.10. However, in no case may any such adjustment fail to comply with paragraph (d)(3) of Section 12.3.9.10.

- (1) If the emissions level calculated in accordance with Section 12.3.9.5 is equal to or greater than eighty (80) percent of the PAL level, the Control Officer may renew the PAL at the same level without considering the factors set forth in paragraph (d)(2) of Section 12.3.9.10; or
- (2) The Control Officer may set the PAL at a level that he determines to be more representative of the source's baseline actual emissions, or that he determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Control Officer in his written rationale.
- (3) Notwithstanding paragraphs (d)(1) and (d)(2) of Section 12.3.9.10:
 - (A) If the PTE of the major stationary source is less than the PAL, the Control Officer shall adjust the PAL to a level no greater than the PTE of the source; and
 - (B) The Control Officer shall not approve renewed PAL level higher than the current PAL unless the major stationary

source has complied with the provisions of Section 12.3.9.11.

- (e) If the compliance date for a federal or state requirement that applies to the PAL source occurs during the PAL effective period, and if the Control Officer has not already adjusted for such requirement, the PAL shall be adjusted at the time of the affected Part 70 Operating Permit is renewed.

12.3.9.11 Increasing a PAL during the PAL Effective Period

- (a) The Control Officer may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs (a)(1) through (a)(4) of Section 12.3.9.11.

- (1) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit as a significant revision to the affected Part 70 Operating Permit. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.
- (2) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT-equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT-equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.
- (3) The owner or operator obtains an Authority to Construct Permit pursuant to Section 12.4 for all emissions unit(s) identified in paragraph (a)(1) of Section 12.3.9.11, regardless of the magnitude of the emissions increase resulting from them. These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment Authority to Construct Permit issuance process, even though they have also become subject to the PAL or continue to be subject to the PAL.

- (4) The PAL conditions in a Part 70 Operating Permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL significant permit revision becomes operational and begins to emit the PAL pollutant.
- (b) The Control Officer shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT-equivalent controls as determined in accordance with paragraph (a)(2) of Section 12.3.9.11), plus the sum of the baseline actual emissions of the small emissions units.
- (c) The PAL conditions in a Part 70 Operating Permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Section 12.3.9.5.

12.3.9.12 Monitoring Requirements for PALs

- (a) General requirements.
 - (1) The PAL conditions in a Part 70 Operating Permit must include enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL conditions must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL conditions.
 - (2) The PAL monitoring system must employ one or more of the four (4) general monitoring approaches meeting the minimum requirements set forth in paragraphs (b)(1) through (b)(4) of Section 12.3.9.12 and must be approved by the Control Officer.
 - (3) Notwithstanding paragraph (a)(2) of Section 12.3.9.12, the PAL monitoring system may also employ an alternative monitoring approach that meets paragraph (a)(1) of Section 12.3.9.12 if approved by the Control Officer.
 - (4) Failure to use a monitoring system that meets the requirements of Section 12.3.9.12 renders the PAL invalid.
- (b) Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring ap-

proaches when conducted in accordance with the minimum requirements in paragraphs (c) through (i) of Section 12.3.9.12:

- (1) Mass balance calculations for activities using coatings or solvents;
- (2) CEMS;
- (3) CPMS or PEMS; and
- (4) Emission factors.

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

- (1) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
- (2) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
- (3) Where the vendor of a material or fuel which is used in or at the emissions unit publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Control Officer determines there is site-specific data or a site-specific monitoring program to support another content within the range.

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

- (1) The CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and
- (2) The CEMS must sample, analyze, and record data at least every fifteen (15) minutes while the emissions unit is operating.

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

- (1) The CPMS or PEMS must be based on current site-specific data demonstrating a correlation between the monitored pa-

parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

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

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

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

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

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

(g) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time whenever there is no monitoring data unless another method for determining emissions during such periods is specified in the Part 70 Operating Permit containing the PAL.

(h) Notwithstanding the requirements in paragraphs (c) through (g) of Section 12.3.9.12, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Control Officer shall, at the time of permit issuance:

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

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

- (i) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the Control Officer. Such testing must occur at least once every five (5) years after issuance of the Part 70 Operating Permit containing the PAL conditions.

12.3.9.13 Recordkeeping Requirements

- (a) The PAL conditions shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Section 12.3.9 and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five (5) years from the date of such record.
- (b) The PAL conditions in a Part 70 Operating Permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five (5) years:
- (1) A copy of the PAL provisions in the Part 70 Operating Permit application and any applications for revisions to the Part 70 Operating Permit; and
 - (2) Each annual certification of compliance pursuant to the conditions in the affected Part 70 Operating Permit and the data relied on in certifying the compliance.

12.3.9.14 Reporting and Notification Requirements

The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the Control Officer, in accordance with the conditions in the affected Part 70 Operating Permit. The reports shall meet the requirements in paragraphs (a) through (c) of Section 12.3.9.14.

- (a) **Semiannual Report.** The semiannual report shall be submitted to the Control Officer within thirty (30) days of the end of each reporting period. This report shall contain the information required in paragraphs (a)(1) through (a)(7) of Section 12.3.9.14:
- (1) The identification of owner and operator and the permit number;
 - (2) Total annual emissions (in tpy) based on a 12-month rolling total for each month in the reporting period.
 - (3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

- (4) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period;
 - (5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;
 - (6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by paragraph (g) of Section 12.3.9.12; and
 - (7) A signed statement by the responsible official certifying the truth, accuracy, and completeness of the information provided in the report.
- (b) **Deviation Report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL conditions, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the affected Part 70 Operating Permit. The reports shall contain the following information:
- (1) The identification of owner and operator and the permit number;
 - (2) The PAL requirement that experienced the deviation or that was exceeded;
 - (3) Emissions resulting from the deviation or the exceedance; and
 - (4) A signed statement by the responsible official certifying the truth, accuracy, and completeness of the information provided in the report.
- (c) **Revalidation Results.** The owner or operator shall submit to the Control Officer the results of any revalidation test or method within three (3) months after completion of such test or method.

12.3.9.15 Transition Requirements

- (a) The Control Officer may not issue a PAL that does not comply with the requirements in Sections 12.3.9.1 through 12.3.9.15 after the

Administrator has approved regulations incorporating these requirements into the Nevada SIP.

- (b) The Control Officer may supersede any PAL which was established prior to the date of approval of the Nevada SIP by the Administrator with a PAL that complies with the requirements of Sections 12.3.9.1 through 12.3.9.15.

12.3.10 **Potential Visibility Impacts**

The Control Officer shall consult with the Federal Land Manager on a proposed major stationary source or major modification that may impact visibility in any Class I Area, in accordance with 40 CFR 51.307.

12.3.11 **Invalidation**

If any provision of Section 12.3, or the application of such provision to any person or circumstance, is held invalid, the remainder of Section 12.3, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 12.4: AUTHORITY TO CONSTRUCT APPLICATION AND PERMIT REQUIREMENTS FOR PART 70 SOURCES

12.4 AUTHORITY TO CONSTRUCT PERMIT REQUIREMENTS FOR PART 70 SOURCES 1

12.4.1 Authority to Construct Permit Required; Duration..... 1

12.4.1.1 Commencement of Construction: Timing Requirements 1

12.4.2 Definitions..... 1

12.4.2.1 Use of Terms..... 1

12.4.3 Authority to Construct Permit for Part 70 Sources..... 5

12.4.3.1 Application Submission, Processing and Issuance Requirements for Stationary Sources Subject to Sections 12.2 or 12.3..... 5

12.4.3.2 Application Submission and Processing Requirements for Part 70 Sources Not Subject to Section 12.2, Section 12.3, or Section 12.4.3.3 11

12.4.3.3 Application Submission and Processing Requirements for Construction or Reconstruction of a Part 70 Source Subject to a Standard under Sections 112(d), (f), or (h) of the Act (a MACT source) 12

12.4.3.4 Authority to Construct Permit Revisions 12

12.4.3.5 Administrative Permit Revisions for Title IV Acid Rain Sources 13

12.4 AUTHORITY TO CONSTRUCT PERMIT REQUIREMENTS FOR PART 70 SOURCES

12.4.1 Authority to Construct Permit Required; Duration

12.4.1.1 Commencement of Construction: Timing Requirements

- (a) No person shall begin actual construction of a New Part 70 source, or modify or reconstruct an existing Part 70 source that falls within the preconstruction review applicability criteria, without first obtaining an Authority to Construct Permit from the Control Officer.
- (b) If a person commences the construction, modification, or reconstruction of a Part 70 source within eighteen (18) months after the date of issuance of an Authority to Construct Permit and construction is not discontinued for a period greater than twelve (12) months, and provided that a timely and complete Part 70 Operating Permit application is submitted pursuant to Section 12.5.2.1, the Authority to Construct Permit shall remain in effect until a Part 70 Operating Permit is granted or denied, or the modification or reconstruction is incorporated into a Part 70 Operating Permit through a permit revision.
- (c) Notwithstanding the provisions of paragraph (b) of Section 12.4.1.1, if an existing Part 70 Operating Permit would prohibit such construction or change in operation, the source must obtain a Part 70 permit revision pursuant to Section 12.5.2.14 before commencing operation.

12.4.2 Definitions

12.4.2.1 Use of Terms

The following definitions apply to terms used in Section 12.4. Unless the context requires otherwise, the following terms shall have the meanings set forth for the purposes of Section 12.4. When a term is not defined, it shall have the meaning provided in Section 0, 40 CFR 70.2, the Act, or common usage, in that order of priority.

- (a) “Existing Part 70 source” means a Part 70 source that either has a valid Part 70 Operating Permit issued prior to the effective date of Section 12.4 or has an application for a Part 70 Operating Permit deemed complete prior to the effective date of Section 12.4.
- (b) “Minor NSR significant levels” means an increase in the potential to emit that equals or exceeds the following rates for the pollutants listed:

<u>Type of Air Pollutant</u>	<u>Potential to Emit (tpy)</u>
<u>PM_{2.5}, directly emitted</u>	<u>5.0</u>
<u>PM₁₀</u>	<u>7.5</u>
<u>CO</u>	<u>50</u>
<u>VOC</u>	<u>20</u>
<u>NO_x</u>	<u>20</u>
<u>SO₂</u>	<u>20</u>
<u>Lead (Pb)</u>	<u>0.6</u>
<u>H₂S</u>	<u>5</u>
<u>Total Reduced Sulfur (including H₂S)</u>	<u>5</u>

- (c) "Modification" or "Modify" means a project which meets any of the preconstruction review applicability criteria in paragraph (e) of Section 12.4.2.1 or that requires a minor or significant permit revision pursuant to Section 12.5.2.14.
- (d) "New Part 70 source" means a Part 70 source that is not an existing Part 70 source.
- (e) "Preconstruction review applicability criteria" means any of the following:
- (1) At an existing major stationary source, a project that will result in a "major modification" as defined in Sections 12.2 or 12.3;
 - (2) A new Part 70 source or a modification to an existing Part 70 source that is subject to Section 12.4.3.2;
 - (3) Any project that is subject to a standard, limitation, or other requirement under 40 CFR Part 60;
 - (4) Any project that is subject to a standard under 40 CFR Part 63, including, but not limited to, construction or reconstruction that requires preconstruction review under 40 CFR § 63.5; or
 - (5) For a solid waste incineration unit, a project that will result in a modification for purposes of Section 129(g)(3) of the Act.
- (f) "Project" means a physical change in, or change in the method of operation of, a major stationary source.

For purposes of this definition, a physical change or change in the method of operation shall not include:

- (1) Routine maintenance, repair and replacement.

- (2) Use of an alternative fuel or raw material by reason of any order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.
- (3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act.
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- (5) Use of an alternative fuel or raw material by a stationary source which:
- (A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51 Subpart I; or
- (B) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I.
- (6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 51.166.
- (7) Any change in ownership at a stationary source.
- (8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
- (A) The Nevada State Implementation Plan and;
- (B) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
- (9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to

emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

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

(g) "Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in second quarter 1980 dollars; or

(B) The delegation of authority to such representative is approved in advance by the Control Officer.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this definition, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or

(4) For Title IV affected sources:

(A) The designated representative, as defined in 40 CFR 72.2, insofar as actions, standards, requirements, or prohibitions under Title IV of the Act, "Acid Deposition Control," or the regulations promulgated there under are concerned; or

(B) The responsible official as defined above for any other purposes under Section 12.4.

12.4.3 Authority to Construct Permit for Part 70 Sources

12.4.3.1 Application Submission, Processing and Issuance Requirements for Stationary Sources Subject to Sections 12.2 or 12.3

(a) Application Requirements:

An application for an Authority to Construct Permit shall be submitted on a form provided by the Control Officer. The application shall contain the following information related to the construction or project:

- (1) A description of all emissions of regulated air pollutants from all affected emissions units and a projected operating schedule for each emissions unit;
- (2) An identification and a description of all points of emissions and a process description of all activities, including design capacity, which may generate emissions of the regulated air pollutants described pursuant to paragraph (a)(1) of Section 12.4.3.1 in sufficient detail to establish the basis for the applicability of standards and fees;
- (3) The emission rates of all regulated air pollutants, including fugitive emission rates. The emission rates must be described in tons per year and for such shorter-term averages as are necessary to establish compliance using the applicable standard reference test method or other methodology specified in paragraph (a)(7) of Section 12.4.3.1;
- (4) A description of any new or modified air pollution control equipment to be operated at the stationary source;
- (5) The calculations on which the information described in Section 12.4.3.1 are based, including a fuel description and specifications;
- (6) Citations to and a description of all applicable requirements;
- (7) The applicable test method or other methodology used for determining compliance with each applicable requirement;
- (8) A control technology demonstration for RACT shall be submitted for a modification to an existing Part 70 source that requires an Authority to Construct Permit because: (i) the modification will increase the source's potential to emit by an amount that is greater than the minor NSR significant level in paragraph (b) of Section 12.4.2.1; and (ii) a control technology demonstration is not otherwise required by Section 12.2 or 12.3. The control tech-

nology demonstration shall only apply to the pollutant exceeding the minor NSR significant level. The application shall describe how RACT was determined and how compliance with RACT is to be measured, including, if applicable, material usage limits, performance testing and continuous emissions monitoring.

(9) If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols;

(10) If applicable, the information necessary to establish a basic design parameter;

(11) If applicable, a description of how the permittee proposes to comply with the compliance assurance monitoring requirements in 40 CFR Part 64, including a plan describing how the applicant will comply with the monitoring design criteria in 40 CFR 64.3; and

(12) If any information or data in the application is proposed to be treated as confidential, a demonstration of compliance with the Certification of Confidentiality procedures in Section 12.6.1.

(13) If the applicant wishes to be subject to the enhanced public participation procedures in Section 12.2.16.6, a declaration to that effect.

(b) Additional Application Requirements for Sources Subject to Section 12.2 (Major Source PSD)

If the new or modified Part 70 source is subject to the Prevention of Significant Deterioration preconstruction review provisions of Section 12.2, the application shall also contain the following:

- (1) The control technology review required by Section 12.2.9;
- (2) The source impact analysis required by Section 12.2.10;
- (3) The air quality analysis required by Section 12.2.12;
- (4) The source information required by Section 12.2.13;
- (5) The additional impact analyses required by Section 12.2.14; and
- (6) Any other information that the Control Officer determines is necessary to process the application in accordance with Section 12.2 or Section 12.3.

(c) **Additional Application Requirements For Sources Subject to Section 12.3 (Major Source Nonattainment NSR)**

If the new or modified Part 70 source is subject to the nonattainment area preconstruction review provisions of Section 12.3, the application shall also contain the following:

- (1) The statewide compliance demonstration required by Section 12.3.3;
- (2) The alternatives analysis required by Section 12.3.4;
- (3) The LAER demonstration and draft permit conditions required to ensure compliance with LAER required by Section 12.3.5.2;
- (4) An air impact analysis including dispersion modeling;
- (5) The information necessary to demonstrate that the applicant has satisfied or will satisfy the emissions offset requirements in Section 12.3.6; and
- (6) Any other information that the Control Officer determines is necessary to process the application in accordance with Section 12.2 or Section 12.3.

(d) **Application Processing Procedures**

Any application for a new or modified Part 70 source subject to paragraph (a) of Section 12.4.3.1 shall be processed in accordance with the following procedures:

- (1) Within one hundred (100) days after the date of receipt of an application for an Authority to Construct Permit, the Control Officer shall determine if the application is complete. If substantial additional information is required, the Control Officer shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Control Officer shall determine the application to be complete.

Unless the Control Officer determines that the application is incomplete within one hundred (100) days after the date of receipt of the application, the official date of submittal of the application shall be deemed to be the date on which the Control Officer determines that the application is complete or the 101st day after the date of receipt, whichever is earlier. Within one year after the date the application is determined to be complete, the Con-

Control Officer shall initiate the public participation procedures in Section 12.2.16.

(2) If, after the date the application is determined to be complete, the Control Officer discovers that additional information is required to act on the application, the Control Officer may request additional information necessary to determine whether the proposed project will comply with all of the applicable requirements set forth in Section 12.2 or Section 12.3, as applicable. The applicant must provide in writing any additional information that the Control Officer requests within the time specified in the written request of the Control Officer. Any delay in the submittal of the requested information may result in a corresponding delay in the action of the Control Officer on the application or a determination of incompleteness.

(e) **Permit Content**

An Authority to Construct Permit issued pursuant to Section 12.4 shall contain each of the following conditions:

- (1) The permittee shall retain records of all required monitoring and performance demonstration data and supporting information for five (5) years after the date of the sample collection, measurement, report, or analysis. Supporting information includes all records regarding calibration and maintenance of the monitoring equipment, all original strip-chart recordings for continuous monitoring instrumentation, and if applicable, all other records required to be maintained pursuant to 40 CFR 64.9(b).
- (2) Each of the conditions and requirements of the permit is severable and, if any are held invalid, the remaining conditions and requirements continue in effect;
- (3) The permittee shall comply with all conditions contained in the permit. Any noncompliance constitutes a violation and is grounds for:
 - (A) An action for noncompliance;
 - (B) Revocation and reissuance or the termination of the permit by the Control Officer; or
 - (C) The reopening or revising of the permit by the permittee as directed by the Control Officer.

- (4) The need to halt or reduce activity to maintain compliance with the conditions of the permit is not a defense to noncompliance with any condition of the permit;
- (5) The Control Officer may revise, revoke and reissue, reopen and revise, or terminate the permit for cause;
- (6) The permit does not convey any property rights or any exclusive privilege;
- (7) The permittee shall provide the Control Officer, within a reasonable time, with any information that the Control Officer requests in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the conditions of the permit. Upon request, the permittee shall also furnish to the Control Officer copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality;
- (8) The permittee shall allow the Control Officer, or any authorized representative of the Control Officer, upon presentation of credentials, to enter the permittee's premises where the source is located or emissions related activity is conducted and to:
 - (A) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the permit;
 - (B) Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
 - (C) Sample or monitor, substances or parameters to determine compliance with the conditions of the permit or applicable requirements; and
 - (D) Document alleged violations using devices such as cameras or video equipment.
- (9) A responsible official of the source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the permit are true, accurate, and complete;

- (10) The permit must contain:
- (A) All applicable requirements, emission limits, and standards, provided, however, that applicable requirements that are not required by the Act or implementing federal regulations, and that are not in the Nevada SIP, may be included in the permit but shall be specifically designated as being not federally enforceable and not enforceable by a citizen's suit pursuant to the Act, and shall be designated as "county only requirements." Terms and conditions so designated are not subject to the requirements that apply to permit review by EPA and affected states;
 - (B) Monitoring, recordkeeping, and reporting requirements sufficient to meet the requirements of 40 CFR Part 64 or paragraph (d) of Section 12.5.2.6, as deemed necessary by the Control Officer;
 - (C) Such other conditions as necessary to demonstrate compliance with the requirements in Section 12.2 or Section 12.3 for construction, subject to those sections.
- (11) The permittee shall maintain documentation of the records required by paragraph (a) of Section 12.2.1.6 or paragraph (a) of Section 12.3.1.6, if applicable.
- (12) The permittee shall report start of construction, construction interruptions exceeding nine (9) months, and completion of construction. The report shall be given to the Control Officer not later than fifteen (15) working days after occurrence of the event;
- (13) The permittee shall provide written notification of the actual date of commencing operation, received by the Control Officer, within fifteen (15) calendar days after such date;
- (14) The permittee shall provide separate written notification for commencing operation for each unit of phased construction, which may involve a series of units commencing operation at different times;
- (15) A source that is a new Part 70 source or a major modification to an existing Part 70 source shall, within sixty (60) days after achieving the maximum rate of production of the new source or modification, but not later than one hundred eighty (180) days after commencing operation, conduct performance tests and furnish the Control Officer a written report of the results of the tests. The Control Officer may require such testing to occur

sooner than the 180 day limit if there are adequate grounds to do so. The performance tests required by the Authority to Construct Permit shall be conducted in accordance with the applicable test method and Section 12.8; and

(16) The permittee shall post the permit in a location which is clearly visible and accessible to the facility's employees and representatives of the department.

(17) The permittee shall pay all fees assessed pursuant to Section 18.

12.4.3.2 Application Submission and Processing Requirements for Part 70 Sources Not Subject to Section 12.2, Section 12.3, or Section 12.4.3.3

(a) In order to obtain an Authority to Construct Permit, the owner or operator of a proposed new Part 70 source that is not subject to Section 12.2 or Section 12.3, or the owner or operator of an existing Part 70 source proposing a modification that increases the source's potential to emit by an amount equal to or greater than the minor NSR significant level in paragraph (b) of Section 12.4.2.1, but that is not a major modification under Section 12.2 or Section 12.3, shall submit an application on a form prescribed by the Control Officer.

(1) The application shall contain the information specified in paragraph (a) of Section 12.4.3.1 and a "Control Technology Review" that meets the requirements of Section 12.2.9, except that Reasonably Available Control Technology (RACT) shall be the technology standard instead of Best Available Control Technology. The applicant shall also include a demonstration that the new Part 70 source or modification does not cause an exceedance of the ambient air quality standards in Section 11 or an exceedance of ambient air increments specified in Section 12.2.3.

(2) The determination of completeness and the procedures for processing the application shall be those in paragraph (d) of Section 12.4.3.1.

(3) The public participation procedures specified in Section 12.1.5.3 shall apply to a permit revision processed under Section 12.4.3.2(a).

(4) The contents of the Authority to Construct Permit issued pursuant to Section 12.4.3.2(a) shall be those in Section 12.4.3.1(e).

(b) In order to obtain an Authority to Construct Permit, the owner or operator of an existing Part 70 source that is proposing a modification that increases the source's potential to emit by an amount

less than the minor NSR significance level in paragraph (b) of Section 12.4.2.1 shall comply with the minor revision process listed in Section 12.5.2.14, including the application procedures listed in paragraph (a)(3) of Section 12.5.2.14.

12.4.3.3 Application Submission and Processing Requirements for Construction or Reconstruction of a Part 70 Source Subject to a Standard under Sections 112(d), (f), or (h) of the Act (a MACT source)

In addition to any other applicable application requirements in Section 12.4, if a new Part 70 source, or the reconstruction of an existing Part 70 source that creates a "new affected source" or "reconstructed affected source" that is a major source under 40 CFR Part 63, the owner or operator shall comply with the application requirements under 40 CFR 63.5 and paragraph (a) of Section 12.4.3.1. The Authority to Construct Permit for such source shall comply with the requirements in 40 CFR 63.5(e).

12.4.3.4 Authority to Construct Permit Revisions

(a) An Authority to Construct Permit shall only be revised administratively or as a significant permit revision.

(1) An administrative permit revision is a permit revision that:

(A) Corrects typographical errors;

(B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change;

(C) Requires more frequent monitoring or reporting by the permittee;

(D) Allows for a change in ownership or operational control of a source where the Control Officer determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Control Officer and the permit transfer procedures specified in Section 12.12 are complied with; or

(E) Incorporates any other type of change which the Administrator has determined to be similar to those in paragraphs (a)(1)(A) through (a)(1)(D) of Section 12.4.3.4.

(2) An administrative permit revision may be made by the Control Officer consistent with the following:

- (A) The Control Officer shall take no more than thirty (30) days from receipt of a request for an administrative permit revision to take final action on such request, and may incorporate the revision without providing notice to the public or affected states provided that the revised permit designates any such permit revisions as having been made pursuant to Section 12.4.3.4.
- (B) The Control Officer shall provide a copy of the revised permit to the Administrator.
- (C) The source may implement the changes addressed in the request for an administrative revision immediately upon submittal of the request. However, if the Control Officer determines that the change does not qualify as an administrative revision, the source may be subject to enforcement proceedings for violation of any existing permit terms and conditions.
- (3) A significant permit revision to an Authority to Construct Permit is any revision to the permit that is not an administrative permit revision.
- (A) A significant permit revision shall be subject to the same application, determination of completeness, processing procedures, public participation, notification, and timetables as the original Authority to Construct Permit, except that the scope of the procedures shall be limited to the revision and issues relevant to that revision and the procedures specified in paragraphs (c) and (d) of Section 12.5.2.18 do not apply.
- (b) From and after the date of commencing operation, an Authority to Construct Permit shall only be revised pursuant to the procedures for revising a Part 70 Operating Permit in Sections 12.5.2.13 and 12.5.4.14.

12.4.3.5 Administrative Permit Revisions for Title IV Acid Rain Sources

Administrative permit revisions to permit conditions governed by the Federal Clean Air Act Title IV Acid Rain Program shall comply with 40 CFR Part 72, as incorporated by reference in Section 21.

EXHIBIT 4

SECTION 12.5: PART 70 OPERATING PERMIT REQUIREMENTS

12.5	PART 70 OPERATING PERMIT REQUIREMENTS.....	1
12.5.1	Definitions.....	1
12.5.2	Part 70 Operating Permit Requirements.....	4
12.5.2.1	Permit Applications: Timely and Complete Applications	4
12.5.2.2	Permit Applications: Duty to Supplement or Correct Application.....	6
12.5.2.3	Permit Applications: Standard Requirements.....	7
12.5.2.4	Permit Applications: Certification.....	10
12.5.2.5	Permit Applications: Insignificant Activities and Emissions	10
12.5.2.6	Permit Content: Standard Requirements	14
12.5.2.7	Permit Content: Federally Enforceable Requirements	21
12.5.2.8	Permit Content: Compliance Requirements	21
12.5.2.9	Permit Content: Permit Shield	23
12.5.2.10	Permit Issuance: Action on Application	24
12.5.2.11	Permit Renewal and Expiration	25
12.5.2.12	Permit Revision: Changes that Do Not Require a Permit Revision	26
12.5.2.13	Permit Revision: Administrative Permit Revision.....	27
12.5.2.14	Permit Revisions: Minor and Significant.....	28
12.5.2.15	Permit Revision: Reopening for Cause	32
12.5.2.16	Permit Revision: Reopenings for Cause by EPA.....	33
12.5.2.17	Public Participation.....	34
12.5.2.18	Permit Review by EPA and Affected States	35
12.5.2.19	Temporary Sources.....	37
12.5.2.20	Part 70 General Permit	37

12.5 PART 70 OPERATING PERMIT REQUIREMENTS

12.5.1 Definitions

The following definitions apply to defined terms used in Section 12.5. Unless the context requires otherwise, the following terms shall have the meanings set forth for the purposes of Section 12.5. When a term is not defined, it shall have the meaning provided in Section 0, Section 12.4, 40 CFR 70.2, the Act, or common usage, in that order of priority.

- (a) "Deviation" means a variation from any permit terms, including terms that establish emission limitations, operating conditions, or work practice standards, and those terms intended to show compliance with those limitations, conditions, or standards, including monitoring, recordkeeping, and reporting requirements. A deviation is not necessarily a violation.
- (b) "Exempt Source" means that the following source categories are exempted from the obligation to obtain a Part 70 Operating Permit:
- (1) Any source that has obtained a voluntarily accepted emission limit, pursuant to Section 12.1.7, to avoid having to obtain a Part 70 Operating Permit, unless a Part 70 Operating Permit is required by some other provision or requirement of the Act;
 - (2) Any source that would be required to obtain a permit solely because it is subject to Section 14.1(b)(62) of these AQRs, "Standards of Performance for New Residential Wood Heaters" (40 CFR 60.530, Subpart AAA); or
 - (3) Any source that would be required to obtain a permit solely because it is subject to Section 13.1(b)(8) of these AQRs, "Emission Standard for Asbestos" (40 CFR 61.145, Subpart M).
- (c) "Existing Part 70 source" means a Part 70 source that either has a valid Part 70 Operating Permit issued prior to the effective date of Section 12.5 or has an application for a Part 70 Operating Permit deemed complete prior to the effective date of Section 12.5.
- (d) "Minor NSR significant levels" means an increase in the potential to emit that would equal or exceed the following rates for the pollutants listed:

<u>Type of Air Pollutant</u>	<u>Potential to Emit (tpy)</u>
<u>PM_{2.5}, directly emitted</u>	<u>5.0</u>
<u>PM₁₀</u>	<u>7.5</u>
<u>CO</u>	<u>50</u>

<u>VOC</u>	<u>20</u>
<u>NO_x</u>	<u>20</u>
<u>SO₂</u>	<u>20</u>
<u>Lead (Pb)</u>	<u>0.6</u>
<u>H₂S</u>	<u>5</u>
<u>Total Reduced Sulfur (including H₂S)</u>	<u>5</u>

- (e) "Modification" or "Modify" means a project which meets any of the preconstruction review applicability criteria in paragraph (g) of Section 12.5.1 or that requires a minor or significant permit revision pursuant to Section 12.5.2.14.
- (f) "New Part 70 source" means a Part 70 source that is not an existing Part 70 source.
- (g) "Preconstruction review applicability criteria" means any of the following:
- (1) At an existing major stationary source, a project that will result in a major modification as defined in Section 12.2 or 12.3;
 - (2) A new Part 70 source or a modification to an existing Part 70 source that is subject to Section 12.4.3.2;
 - (3) Any project that is subject to a standard, limitation, or other requirement under 40 CFR Part 60;
 - (4) Any project that is subject to a standard under 40 CFR Part 63, including, but not limited to, construction or reconstruction that requires preconstruction review under 40 CFR 63.5; or
 - (5) For a solid waste incineration unit, a project that will result in a modification for purposes of Section 129(g)(3) of the Act.
- (h) "Project" means a physical change in, or change in the method of operation of, a major stationary source.

For purposes of this definition, a physical change or change in the method of operation shall not include:

- (1) Routine maintenance, repair and replacement.
- (2) Use of an alternative fuel or raw material by reason of any order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

- (3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act.
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- (5) Use of an alternative fuel or raw material by a stationary source which:
 - (A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51 Subpart I; or
 - (B) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51 Subpart I.
- (6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I.
- (7) Any change in ownership at a stationary source.
- (8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
 - (A) The Nevada State Implementation Plan and;
 - (B) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
- (9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.
- (10) The reactivation of a very clean coal-fired electric utility steam generating unit.

(i) "Responsible official" means one of the following:

- (1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (A) The operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in second quarter 1980 dollars; or
 - (B) The delegation of authority to such representative is approved in advance by the Control Officer.
- (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this definition, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or
- (4) For Title IV affected sources:
 - (A) The designated representative, as defined in 40 CFR 72.2, insofar as actions, standards, requirements, or prohibitions under Title IV of the Act, "Acid Deposition Control," or the regulations promulgated there under are concerned; or
 - (B) The responsible official as defined above for any other purposes under Section 12.5.

12.5.2 Part 70 Operating Permit Requirements

12.5.2.1 Permit Applications: Timely and Complete Applications

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of the owner or operator of the Part 70 source to assist a source in submitting a complete permit application.

- (a) Timely application.

- (1) A timely application for a source applying for a Part 70 Operating Permit for the first time is one that is submitted within twelve (12) months after the source becomes subject to the permit program. If a source submits a timely application under this provision, it may continue operating under its Authority to Construct Permit until final action is taken on its application for a new Part 70 Operating Permit.
- (2) For purposes of permit renewal, a timely application is a complete application that is submitted at least six (6) months and not greater than eighteen (18) months prior to the date of permit expiration. If a source submits a timely application under this provision, it may continue operating under its current Part 70 Operating Permit until final action is taken on its application for a renewed Part 70 Operating Permit.
- (3) A timely application for an existing Part 70 source that has obtained an Authority to Construct Permit is one that is submitted within twelve (12) months after commencing operation of the modification or reconstruction authorized by the permit, or on or before such earlier date that the Control Officer may establish. However, where an existing Part 70 Operating Permit would prohibit such construction or change in operation, the source must obtain a Part 70 permit revision pursuant to Section 12.5.2.14 before commencing operation.
- (4) In order to be deemed a timely application, the application must also meet the complete application provisions listed in paragraph (b) of Section 12.5.2.1.

(b) Complete application.

- (1) To be deemed complete, an application must provide all information necessary to evaluate the subject source and its application and to determine all applicable requirements, including the emission rates information required by paragraph (a)(3) of Section 12.4.3.1. Applications for permit revisions need supply only such information as is related to the proposed change. A responsible official shall certify the submitted information consistent with Section 12.5.2.4.
- (2) Unless the Control Officer notifies the source in writing within sixty (60) days of receipt of the application that an application is not complete, such application shall be deemed to be complete.
- (3) A completeness determination shall not be required for a minor permit revision.

- (4) If, while processing an application that has been determined or deemed to be complete, the Control Officer determines that additional information is necessary to evaluate or take final action on that application, the Control Officer may request such information in writing and set a reasonable deadline for a response. Failure to provide the information requested in a timely manner may result in a determination that the application is incomplete.
- (5) The submittal of a complete application shall not affect the requirement that any source shall have an Authority to Construct Permit issued pursuant to Section 12.4.3 prior to construction.
- (c) Area source-specific requirements.
- (1) If a regulation promulgated by the administrator under Section 111 or 112 of the Act (42 U.S.C. 7411 or 7412) requires area sources to submit an application for a Part 70 Operating Permit, each area source covered by the requirement must submit an application in accordance with that regulation.
- (d) Confidential Information. Claims of confidentiality as to information submitted to EPA shall be made pursuant to applicable federal requirements in 40 CFR Part 2. Claims of confidentiality as to information submitted to the department shall be made pursuant to Section 12.6. In the case where a source has submitted information to the Control Officer under a claim of confidentiality that also must be submitted to EPA, the Control Officer shall either submit the information to EPA or require the source to submit a copy of such information directly to EPA.
- (e) Late applications. An application submitted after the deadlines established for timeliness shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

12.5.2.2 Permit Applications: Duty to Supplement or Correct Application

Any applicant who fails to submit any relevant facts, or who has submitted incorrect information in a permit application, shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit. A responsible official shall certify the additional information consistent with the requirements of Section 12.5.2.4.

12.5.2.3 Permit Applications: Standard Requirements

Information as described below for each emissions unit at a Part 70 source shall be included in the application, except for insignificant activities. The application shall be submitted on a form provided by the Control Officer.

- (a) Identifying information, including company name, company address, plant name and address if different from company name and address, owner's name and agent, and telephone number and name of the responsible official, plant site manager, or contact;
- (b) A description of the source's processes and products by Standard Industrial Classification Code (SIC) or the North American Industry Classification System (NAICS), including any associated with each alternate scenario identified by the source;
- (c) The following emissions-related information:
 - (1) The potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants, including HAPs, from any emissions unit, except for insignificant activities;
 - (2) Identification and description of all points of emissions described in paragraph (c)(1) of Section 12.5.2.3 in sufficient detail to establish the basis for an air impact analysis and applicability of applicable requirements;
 - (3) Emissions rates in tons per year, including fugitive emission rates, and in such terms as are necessary to establish compliance with applicable requirements, consistent with the results of performance tests conducted pursuant to the source's Part 70 Operating Permit or the source's Authority to Construct Permit, whichever is more current;
 - (4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;
 - (5) Identification and description of air pollution control equipment and compliance monitoring devices or activities; and
 - (6) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and HAPs at the Part 70 source.
- (d) Other information required by any applicable requirement, including:

- (1) Information related to stack height limitations developed pursuant to Section 12.2.7.3; and
 - (2) The calculations on which the information in paragraphs (c)(1) through (c)(6) of Section 12.5.2.3 is based.
- (e) The following air pollution control requirements:
- (1) Citation and description of all applicable requirements, and
 - (2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.
- (f) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements;
- (g) An explanation of any proposed exemptions from otherwise applicable requirements;
- (h) If alternative operating scenarios are to be identified in the permit pursuant to paragraph (i) of Section 12.5.2.6, such information as is necessary for the Control Officer to define those scenarios and determine the applicable requirements for each proposed scenario;
- (i) If emissions trading is proposed, the legal authority for the trading and a description of the proposed conditions for determining compliance with the trading requirements, including replicable procedures that ensure that the emissions trades are quantifiable and enforceable.
- (j) A compliance plan that contains all of the following:
- (1) A description of the compliance status of the source with respect to all applicable requirements;
 - (2) A compliance statement and compliance schedule, as follows:
 - (A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;
 - (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the permit term shall

satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement; and

- (C) A schedule of compliance for any emissions unit at the source that will not be in compliance with any applicable requirement at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with the applicable requirements. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- (3) A schedule for submission of certified progress reports no less than every six (6) months for sources required to have a schedule of compliance to remedy a violation.
- (4) The compliance plan content requirements specified in paragraphs (j)(1) through (j)(3) of Section 12.5.2.3 shall apply and be included in the "acid rain" portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, "Acid Deposition Control," with regard to the schedule and methods the source will use to achieve compliance with the acid rain emission limitations.
- (k) Requirements for compliance certification, including all of the following:
- (1) A certification of compliance with all applicable requirements by a responsible official consistent with Section 12.5.2.4 of the AQRs and Section 114(a)(3) of the Act, "Enhanced Monitoring and Compliance Certification";
- (2) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method; and
- (3) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.
- (l) For acid rain portions of permit applications and compliance plans, submit a current EPA Acid Rain Permit Application or New Unit Exemption form, as applicable.

- (m) If a PAL is requested, the information required by Section 12.2.19 for establishing a PAL.

12.5.2.4 Permit Applications: Certification

Any application form, report, or compliance certification submitted pursuant to Section 12.5 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification, and any other certification required under Section 12.5, shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

12.5.2.5 Permit Applications: Insignificant Activities and Emissions

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement.

- (a) The following types of activities and emissions units may be presumptively omitted from a permit application for a Part 70 Operating Permit. Certain of these listed activities include qualifying statements intended to exclude many similar activities:
- (1) Combustion emissions from propulsion of mobile sources;
 - (2) Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act;
 - (3) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process;
 - (4) Noncommercial food preparation;
 - (5) Consumer use of office equipment and products, not including printing establishments or businesses primarily involved in photographic reproduction;
 - (6) Janitorial services and consumer use of janitorial products;
 - (7) Internal combustion engines used for landscaping purposes;
 - (8) Laundry activities, except for dry-cleaning and steam boilers;
 - (9) Bathroom/toilet vent emissions;
 - (10) Emergency (backup) electrical generators at residential locations;

- (11) Tobacco smoking rooms and areas;
- (12) Blacksmith forges;
- (13) Plant maintenance and upkeep activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots), provided these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and not otherwise triggering a permit revision. Cleaning and painting activities qualify as insignificant activities if they are not subject to VOC or HAP control requirements. Asphalt batch plant owners/operators must still get a permit if otherwise required.
- (14) Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or degreasing (solvent metal cleaning) activities, and not otherwise triggering a permit revision;
- (15) Portable electrical generators that can be moved by hand from one location to another;
- (16) Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic;
- (17) Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals;
- (18) Air compressors and pneumatically operated equipment, including hand tools;
- (19) Batteries and battery charging stations, except at battery manufacturing plants;
- (20) Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOCs or HAPs;
- (21) Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized;
- (22) Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized;

- (23) Drop hammers or hydraulic presses for forging or metalworking;
- (24) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
- (25) Vents from continuous emissions monitors and other analyzers;
- (26) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
- (27) Hand-held applicator equipment for hot melt adhesives with no VOCs in the adhesive formulation;
- (28) Equipment used for surface coating, painting, dipping, or spraying operations, except those that will emit VOCs or HAPs;
- (29) CO₂ lasers, used only on metals and other materials which do not emit HAPs in the process;
- (30) Consumer use of paper trimmers/binders;
- (31) Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
- (32) Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants;
- (33) Laser trimmers using dust collection to prevent fugitive emissions;
- (34) Bench-scale laboratory equipment used for physical or chemical analysis, but not lab fume hoods or vents;
- (35) Routine calibration and maintenance of laboratory equipment or other analytical instruments;
- (36) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis;
- (37) Hydraulic and hydrostatic testing equipment;
- (38) Environmental chambers not using HAP gases;
- (39) Shock chambers;

- (40) Humidity chambers;
- (41) Solar simulators;
- (42) Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted;
- (43) Process water filtration systems and demineralizers;
- (44) Demineralized water tanks and demineralizer vents;
- (45) Boiler water treatment operations, not including cooling towers;
- (46) Oxygen scavenging (deaeration) of water;
- (47) Ozone generators;
- (48) Fire suppression systems;
- (49) Emergency road flares;
- (50) Steam vents and safety relief valves;
- (51) Steam leaks;
- (52) Steam cleaning operations; and
- (53) Steam sterilizers.

(b) Any person may petition the Control Officer for a rule to be adopted under the procedures in Section 2 to add an activity or emission unit to this list of insignificant activities and emissions which may be excluded from a Part 70 Operating Permit application. The petition shall include the following information:

- (1) A complete description of the activity or emission to be added to the list;
- (2) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions; and
- (3) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

- (c) The Control Officer shall review, on a case-by-case basis, insignificant activities for an individual Part 70 source that are listed in the application but do not require a detailed description. No activity with the potential to emit greater than two (2) tpy of any criteria pollutant, five (5) tpy of a combination of criteria pollutants, five hundred (500) pounds per year of any HAP, or one (1) tpy of a combination of HAPs shall be eligible to be determined an insignificant activity under Section 12.5.2.5.

12.5.2.6 Permit Content: Standard Requirements

Each Part 70 Operating Permit shall include the following elements:

- (a) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance or that become effective within the term of the permit:
- (1) The permit shall specify, and reference the origin of and authority for, each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - (2) Where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, "Acid Deposition Control," both provisions shall be incorporated into the permit.
 - (3) If the Nevada SIP allows a determination of an alternative emissions limit at a Part 70 source, equivalent to that contained in the SIP, to be made during the permit issuance, renewal, or significant revision process, and the Control Officer elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- (b) All terms and conditions of any Authority to Construct Permit, to the extent that such terms and conditions apply to operations. The permit shall identify those terms and conditions and the authority upon which they are based, and shall contain a statement that any changes to any such terms and conditions must be processed in accordance with the applicable permit revision procedures in Section 12.4, 12.5.2.13 or 12.5.2.14 and applicable SIP requirements;

(c) Permit duration.

- (1) The Control Officer shall issue permits for a fixed term of five (5) years in the case of "acid rain" sources, and for a term not to exceed five (5) years in the case of all other sources.
- (2) Notwithstanding paragraph (c)(1) of Section 12.5.2.6, the Control Officer shall issue permits for solid waste incineration units combusting municipal waste and subject to a standard under Section 129(e) of the Act shall be issued for a period not to exceed twelve (12) years and shall review such permits at least every five (5) years.
- (3) A condition or requirement in a Part 70 Operating Permit that incorporates conditions from an Authority to Construct Permit derived from Sections 12.2 or 12.3 requirements shall remain in effect and enforceable after expiration or termination of the Part 70 Operating Permit in which they are contained;

(d) Monitoring and related recordkeeping and reporting requirements.

- (1) Each permit shall contain the following requirements with respect to monitoring:
 - (A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64, and any other procedures and methods that may be promulgated pursuant to Sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;
 - (B) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring, compliance monitoring may consist of recordkeeping designed to serve as monitoring or periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph; and

- (C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
- (2) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:
- (A) Records of required monitoring information that include the following:
- (i) The date, place as defined in the permit, and time of sampling or measurements;
 - (ii) The dates analyses were performed;
 - (iii) The company or entity that performed the analyses;
 - (iv) The analytical techniques or methods used;
 - (v) The results of such analyses; and
 - (vi) The operating conditions as existing at the time of sampling or measurement.
- (B) Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
- (3) For sources that contain emissions units subject to 40 CFR Part 64 (Compliance Assurance Monitoring, or CAM), the following general terms and conditions shall become terms and conditions of the permit:
- (A) The permittee shall install, calibrate, maintain, and operate a monitoring system according to the manufacturer's specifications or other written procedures that provide adequate assurance that the system would reasonably be expected to function in accordance with the requirements in 40 CFR 64.7.
- (B) At all times, the permittee shall properly maintain the monitoring system, including, but not limited to, maintaining

parts if necessary for routine repairs of the monitoring system.

- (C) The permittee shall collect data at all required intervals during emissions unit operation, except for, as applicable, monitoring malfunctions, repairs associated with monitoring malfunctions, and required quality assurance or control activities, as follows:
- (i) Data recorded during monitoring malfunctions, repairs associated with malfunctions, and required quality assurance or control activities shall not be used for purposes of CAM.
 - (ii) The permittee shall maintain records of the beginning date and time, ending date and time, and cause (including unknown cause, if applicable) for monitoring downtime incidents (other than downtime associated with zero and span or other daily calibration checks, if applicable).
 - (iii) The permittee shall use all data collected during all periods other than those identified in paragraph (d)(3)(C)(i) of Section 12.5.2.6 in assessing the operation of the control device and associated control system.
 - (iv) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures caused in part by poor maintenance or careless operation are not malfunctions and shall be considered deviations.
- (D) All incidents of monitoring downtime recorded under paragraph (d)(3)(C)(i) of Section 12.5.2.6 shall be reported pursuant to paragraph (d)(4) of Section 12.5.2.6.
- (E) The permittee shall comply with the requirements of an approved CAM quality improvement plan, if required by the Control Officer.
- (4) With respect to reporting, the permit shall incorporate all applicable reporting requirements, including those in 40 CFR 64.9(a), if applicable, and require all of the following:
- (A) Submittal of reports of any required monitoring every six (6) months, or more frequently if specified by an applicable requirement or by the Control Officer. All instances of de-

viations from permit requirements, including monitoring downtime, must be clearly identified in such reports. All required monitoring reports submitted must be certified by a responsible official pursuant to section 12.5.2.4;

(B) Reporting of deviations from permit requirements, including those attributable to malfunction, startup, or shut-down. Deviations shall be reported promptly. All reports of deviations shall identify the probable cause of the deviations and any corrective actions or preventative measures taken. "Promptly," for purposes of reporting, shall mean as follows:

(i) A deviation caused by excess emissions shall be reported according to the requirements of Section 25.6.1.

(ii) A deviation from a permit requirement that poses a potential imminent and substantial danger to public health, safety, or the environment, if violated, shall be reported according to the requirements of Section 25.6.2; and

(iii) All other deviations shall be reported within six (6) months of the date the permittee first learns of the deviation.

(C) **Written Report of Deviations.** A written report must be submitted at the time specified in paragraph (d)(4)(B) of Section 12.5.2.6. This form does not provide an exemption from reporting all malfunctions or emergencies, which shall be reported according to Section 25.6. All deviation reports submitted must be certified by a responsible official.

(5) Claims of confidentiality shall be governed by Section 12.6.

(e) **Acid Rain Allowances.** For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder:

(1) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(2) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a

defense to noncompliance with any other applicable requirement.

- (3) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.
- (f) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;
- (g) Standard provisions stating the following:
- (1) The permittee must comply with all conditions of the Part 70 Operating Permit. Any permit noncompliance may constitute a violation of these AQRs, Nevada law, and the Act, and is grounds for any of the following: enforcement action; permit termination; revocation and re-issuance; revision; or denial of a permit renewal application.
 - (2) The need to halt or reduce activity is not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - (3) The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and re-issuance, or termination, or of a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
 - (4) The permit does not convey any property rights of any sort, or any exclusive privilege.
 - (5) The permittee shall furnish to the Control Officer, within a reasonable time, any information that the Control Officer may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Control Officer copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.
 - (6) On a timely basis, the permittee shall meet all applicable requirements that become effective during the permit term

- (h) **Emission Fee.** A provision to ensure that the source pays fees consistent with Section 18;
- (i) **Emissions Programs.** A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes, for changes that are provided for in the permit;
- (i) **Alternative Operating Scenarios.** Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Control Officer. Such terms and conditions:
- (1) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - (2) Shall extend the permit shield to all terms and conditions under each such operating scenario; and
 - (3) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of Section 12.5.
- (k) **Emissions Trading.** Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements and the Nevada SIP provide for trading such increases and decreases without a case-by-case approval by the Control Officer and the trading is necessary solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of any otherwise applicable requirements. Such terms and conditions:
- (1) Shall include all terms required to determine compliance, including replicable procedures and permit terms that ensure that emissions trades are quantifiable and enforceable;
 - (2) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and
 - (3) Shall ensure that the terms and conditions meet all applicable requirements and that the permitting of affected sources occurs in accordance with the deadlines in Title IV of the Act and the regulations promulgated thereunder.

- (l) Any application form, report, or compliance certification submitted pursuant to these AQRs shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete; and
- (m) The permit shall specify that any person who has been issued a permit under Section 12.5 shall post such permit in a location which is clearly visible and accessible to the facility's employees and representatives of the department.

12.5.2.7 Permit Content: Federally Enforceable Requirements

- (a) Except as provided in paragraph (b) of Section 12.5.2.7, all terms and conditions in a Part 70 Operating Permit, including any provisions designed to limit a source's PTE, are enforceable by EPA and by citizens pursuant to a citizen's suit filed under the Act.
- (b) Notwithstanding paragraph (a) of Section 12.5.2.7, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit, but shall be specifically designated as being not federally enforceable and not enforceable by a citizen's suit pursuant to the Act and shall be designated as "county-only requirements." Terms and conditions so designated are not subject to the requirements that apply to permit review by EPA and affected states.
- (c) The Control Officer shall determine which conditions are "county-only requirements" in each Part 70 Operating Permit.

12.5.2.8 Permit Content: Compliance Requirements

All Part 70 Operating Permits shall contain all of the following elements with respect to compliance:

- (a) Compliance certification, testing, monitoring, reporting, and record-keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required to be submitted pursuant to Section 12.5.2 shall contain a certification by a responsible official that meets the requirements of Section 12.5.2.4;
- (b) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Control Officer or an authorized repre-

sentative to enter the permittee's premises where a Part 70 source is located or emissions related activity is conducted and to:

- (1) Have access to and copy any records that must be kept under the conditions of the permit;
 - (2) Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
 - (3) Sample or monitor substances or parameters for the purpose of assuring compliance with the permit or applicable requirements; and
 - (4) Document alleged violations using devices such as cameras or video equipment.
- (c) A schedule of compliance consistent with paragraph (j) of Section 12.5.2.3 and 40 CFR 70.5(c)(8);
- (d) Progress reports consistent with an applicable schedule of compliance to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Control Officer. Such progress reports shall contain all of the following:
- (1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - (2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- (e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:
- (1) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Control Officer;
 - (2) In accordance with paragraph (d) of Section 12.5.2.6, a means for monitoring the compliance of the source with its emission limitations, standards, and work practices;
 - (3) A requirement that the compliance certification include all of the following (provided that the identification of applicable informa-

tion may reference the permit or previous reports, as applicable):

- (A) The identification of each term or condition of the permit that is the basis of the certification;
 - (B) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. The methods and means shall include, at a minimum, the monitoring and related recordkeeping and reporting requirements described in 40 CFR 70.6(a)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with Section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
 - (C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (e)(3)(B) of Section 12.5.2.8. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify, as possible exceptions to compliance, any periods during which compliance is required and in which an excursion or exceedance (as defined under 40 CFR Part 64) occurred; and
 - (D) Such other facts as the Control Officer may require to determine the compliance status of the source.
- (4) A requirement that all compliance certifications be submitted to EPA as well as to the Control Officer.
- (f) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, "Enhanced Monitoring and Compliance Certification," and Section 504(b) of the Act, "Monitoring and Analysis."

12.5.2.9 Permit Content: Permit Shield

- (a) Except as otherwise provided in Section 12.5.2.9, the Control Officer may include in each Part 70 Operating Permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

- (1) Such applicable requirements are included and are specifically identified in the permit; or
 - (2) The Control Officer, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
- (b) A Part 70 Operating Permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (c) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:
- (1) The provisions of Section 303 of the Act, "Emergency Orders," including the authority of the Administrator under that section;
 - (2) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;
 - (3) The ability of the Control Officer to obtain information from a source, and the ability of EPA to obtain information from a source, under Section 114 of the Act, "Inspection, Monitoring, and Entry"; and
 - (4) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

12.5.2.10 Permit Issuance: Action on Application

- (a) A permit, permit revision, or renewal may be approved only if all of the following conditions have been met:
- (1) The Control Officer has received a complete application for a permit, permit revision, or permit renewal, except that a complete application need not be received before a Part 70 general permit is issued pursuant to Section 12.5.2.20;
 - (2) Except for revisions qualifying as administrative or minor permit revisions under Section 12.5.2.13 or paragraphs (a) and (b) of Section 12.5.2.14, the Control Officer has complied with the applicable requirements for public participation in Section 12.5.2.17;
 - (3) The Control Officer has complied with the requirements for notifying and responding to EPA and affected states under paragraph (b) of Section 12.5.2.18;

- (4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of Section 12.5; and
- (5) EPA has received a copy of the proposed permit or permit revision and any notices required under paragraphs (a) and (b) of Section 12.5.2.18, and has not objected to issuance of the permit under paragraph (c) of Section 12.5.2.18 within the time period specified therein.
- (b) Except as provided under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Control Officer shall take final action on each permit application, including a request for permit revision or renewal, within eighteen (18) months after receiving a complete application.
- (c) The Control Officer shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions or conditions in an applicable Authority to Construct Permit. The Control Officer shall send this statement to EPA along with each proposed Part 70 Operating Permit and to any other person who requests it.
- (d) Upon issuance of a Part 70 Operating Permit or revision to that permit, any Authority to Construct Permit issued for an emissions unit subject to that permit or revision is terminated for that emissions unit. However, the terms and conditions of the Authority to Construct Permit remain in effect, in accordance with paragraph (b) of Section 12.5.2.6.
- (e) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under Title I of the Act.

12.5.2.11 Permit Renewal and Expiration

- (a) Permits being renewed are subject to the same procedural requirements, including those for public participation and affected state and EPA review, that apply to initial permit issuance.
- (b) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted.
- (c) If a timely and complete renewal application is submitted and the Control Officer fails to issue or deny the renewal permit before the end of the term of the current permit, then all of the terms and conditions of the current permit, including the permit shield, shall remain in effect until renewal or denial.

- (d) Except as provided in paragraph (b) of Section 12.5.2.12 and paragraphs (a) and (b) of Section 12.5.2.14, no Part 70 source may operate after the time that it is required to submit a timely and complete application under Section 12.5.2 except in compliance with a permit issued thereunder. If a Part 70 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a Part 70 Operating Permit is not a violation of Section 12.5 until the Control Officer takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the Control Officer, any additional information identified as being needed to process the application.

12.5.2.12 Permit Revision: Changes that Do Not Require a Permit Revision

- (a) A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provisions of Title I of the Act.
- (1) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.
 - (2) Sources must provide at least seven (7) days' written notice to the Control Officer and EPA of each such change, except for changes that qualify as insignificant under Section 12.5.2.5. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.
 - (3) The change shall not qualify for a permit shield.
 - (4) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.
- (b) A Part 70 source may make changes without requiring a permit revision if the changes are defined as Section 502(b)(10) changes under the Act, are not modifications under any provisions of Title I of the Act, and do not exceed the emissions allowable under the permit (whether expressed in the permit as a rate of emissions or in terms of total emissions). For each such change, the written notification required by paragraph (a)(2) of Section 12.5.2.12 shall apply. The change shall not qualify for a permit shield.

12.5.2.13 Permit Revision: Administrative Permit Revision

- (a) An administrative permit revision is a permit revision that:
- (1) Corrects typographical errors;
 - (2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 - (3) Requires more frequent monitoring or reporting by the permittee;
 - (4) Allows for a change in ownership or operational control of a source if the Control Officer determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Control Officer and the permit transfer procedures in Section 12.12 have been complied with;
 - (5) Incorporates into the permit the terms and conditions of an Authority to Construct Permit for a modification if the terms and conditions were subject to the procedures prescribed by Section 12.2.16.6; or
 - (6) Incorporates into the permit the terms and conditions in an Authority to Construct Permit issued pursuant to Sections 12.4.3.3 or 12.4.3.4 if the terms and conditions were adopted under the procedures prescribed by Section 12.2.16.6.
- (b) Administrative permit revisions for purposes of the "acid rain" portion of the permit shall be governed by regulations promulgated under Title IV of the Act.
- (c) **Administrative Permit Revisions Procedures.** An administrative permit revision may be made by the Control Officer consistent with the following:
- (1) The Control Officer shall take no more than sixty (60) days from receipt of a request for an administrative permit revision to take final action on such request, and may incorporate such changes without providing notice to the public or affected states, provided that the Control Officer designates any such permit revisions as having been made pursuant to an administrative permit revision.
 - (2) The Control Officer shall submit a copy of the revised permit to EPA.

- (d) The source may implement the changes addressed in the request for an administrative revision immediately upon submittal of the request.
- (e) The Control Officer shall, upon taking final action for an administrative permit revision, allow coverage by the permit shield for administrative permit revisions made pursuant to paragraph (a)(5) of Section 12.5.2.13 which meet the relevant requirements of paragraph (c) of Section 12.5.2.13 and paragraph (c) of Section 12.5.2.14 for significant permit revisions.

12.5.2.14 Permit Revisions: Minor and Significant

A significant permit revision is any revision to a Part 70 Operating Permit that cannot be accomplished under the Section 12.5.2.14 provisions for minor or administrative permit revisions. Any permit revision for purposes of the "acid rain" portion of the permit shall be governed by regulations promulgated by the Administrator under Title IV of the Act and shall require a significant permit revision.

(a) Minor Permit Revision Procedures.

- (1) Criteria. Minor permit revision procedures may be used only for those permit revisions that:
 - (A) Do not violate any applicable requirement, including any provision of the Nevada SIP (including specific control strategies);
 - (B) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
 - (C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
 - (D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act, or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, "Early Reduction";

- (E) Are not modifications under any provision of Title I of the Act; and
 - (F) Are not modifications subject to paragraph (a)(8) of Section 12.4.3.1.
- (2) **Emissions Trading.** Minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor Part 70 Operating Permit revision procedures are explicitly provided for in the Nevada SIP or an applicable requirement.
- (3) **Application.** A permittee shall submit a standard application form provided by the department requesting a minor permit revision. The form shall include all of the following:
- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - (B) The source's suggested draft minor permit revision language;
 - (C) Certification by a responsible official that the proposed revision meets the criteria for a minor permit revision; and
 - (D) The information the Control Officer needs in order to notify EPA and affected states.
- (4) **EPA and Affected State Notification.** Within five (5) working days of receipt of a complete minor permit revision application, the Control Officer shall notify EPA and affected states of the requested permit revision.
- (5) **Timetable for Approval.** The Control Officer may not issue a final permit revision approval until after EPA's 45-day review period or until EPA has notified the Control Officer that EPA will not object to issuance of the permit revision, whichever is first. Within ninety (90) days of the Control Officer's receipt of a complete application under minor permit revision procedures or fifteen (15) days after the end of EPA's 45-day review period under this paragraph, whichever is later, the Control Officer shall:
- (A) Issue the permit revision as proposed;
 - (B) Deny the permit revision;

- (C) Determine that the requested revision does not meet the minor permit revision criteria and should be reviewed under the significant revision procedures; or
- (D) Revise the draft minor permit revision and transmit to EPA the new proposed revision. Transmittal to EPA initiates the approval process described in paragraph (a) of Section 12.5.2.18.
- (6) **Source's Ability to Make a Change.** A Part 70 source may make the change proposed in its minor permit revision application thirty (30) days after it files such application. After the source makes the change allowed by the preceding sentence, and until the Control Officer takes any of the actions specified in paragraphs (a)(5)(A) through (a)(5)(D) of Section 12.5.2.14, the source must comply with both the applicable requirements promulgated by EPA governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.
- (7) **Permit Shield.** A permit shield shall not extend to minor permit revisions.
- (b) **Group Processing of Minor Permit Revisions.** Consistent with this paragraph, the Control Officer may modify the procedure outlined in paragraph (a) of Section 12.5.2.14 to process groups of a source's applications for certain modifications eligible for minor permit revision processing.
- (1) **Criteria.** Group processing of modifications may be used only for those permit revisions:
- (A) That are minor permit revisions; and
- (B) That collectively are below the following threshold levels: ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable definition of major stationary source in Sections 12.2, 12.3, and 12.5, or five (5) tpy, whichever is less.
- (2) **Application.** An application requesting the use of group processing procedures shall include the following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 - (B) The source's suggested draft permit revision language;
 - (C) Certification by a responsible official that the proposed revision meets the criteria for use of group processing procedures, and a request that such procedures be used;
 - (D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested revision, aggregated with these other applications, equals or exceeds the threshold set under paragraph (b)(1)(B) of Section 12.5.2.14;
 - (E) Certification that the source has notified EPA of the proposed revision. Such notification need only contain a brief description of the requested revision; and
 - (F) Completed forms for the Control Officer to use to notify EPA and affected states of the revisions for which group processing is sought.
- (3) **EPA and Affected State Notification.** On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (b)(1)(B) of Section 12.5.2.14, whichever is earlier, the Control Officer shall notify EPA and affected states of the requested permit revisions.
- (4) **Timetable for Issuance.** The provisions of paragraph (a)(5) of Section 12.5.2.14 shall apply to modifications eligible for group processing, except that the Control Officer shall take one of the specified actions within one hundred eighty (180) days of receipt of the application or fifteen (15) days after the end of EPA's 45-day review period under paragraph (c) of Section 12.5.2.18, whichever is later.
- (5) **Source's Ability to Make a Change.** The provisions of paragraph (a)(6) of Section 12.5.2.14 shall apply to modifications eligible for group processing.
- (6) **Permit Shield.** Revisions eligible for group processing shall not be entitled to the permit shield.

(c) Significant Permit Revision Procedures.

- (1) Criteria.** Significant permit revision procedures shall be used for applications requesting permit modifications that do not qualify as minor permit revisions or as administrative permit revisions, including the creation of a PAL pursuant to Section 12.2.19. At a minimum, every significant change in existing monitoring permit terms or conditions, and every relaxation of reporting or record-keeping permit terms or conditions, shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.
- (2)** Significant permit revisions shall meet all requirements for issuance and renewal of a Part 70 Operating Permit under Sections 12.5.2.10 and 12.5.2.11, including those for applications, public participation, review by affected states, and review by EPA, as they apply to permit issuance and permit renewal. The Control Officer shall complete review on the majority of significant permit revisions within nine (9) months after receipt of a complete application.

12.5.2.15 Permit Revision: Reopening for Cause

- (a)** Each Part 70 Operating Permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

 - (1)** New applicable requirements become applicable to a Part 70 source that is a major stationary source under Section 12.2, Section 12.3, or 40 CFR 70.3(a)(1) with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire unless the original permit or its terms and conditions has been extended pursuant to paragraph (c) of Section 12.5.2.11;
 - (2)** Additional requirements (including excess emissions requirements) become applicable to an affected source under the Acid Rain Program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

- (3) The Control Officer or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
- (4) The Administrator or the Control Officer determines that the permit must be revised or revoked to assure compliance with the applicable requirements.
- (b) PAL conditions are to be revised under Section 12.3.9.8 or paragraph (b) of Section 12.2.19.8
- (c) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance, and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
- (d) Reopenings under paragraph (a)(1) of Section 12.5.2.15 shall not be initiated before a notice of such intent is provided to the source by the Control Officer at least thirty (30) days in advance of the date that the permit is to be reopened, except that the Control Officer may provide a shorter time period in the case of an emergency.

12.5.2.16 Permit Revision: Reopenings for Cause by EPA

- (a) The Control Officer shall, within ninety (90) days after receipt of notification that EPA finds that cause exists to terminate, revise, or revoke and reissue a permit, forward to EPA a proposed determination of termination, revision, or revocation and reissuance, as appropriate. The Control Officer may request a 90-day extension if a new or revised permit application is necessary or if the Control Officer determines that the permittee must submit additional information.
- (b) The Administrator will review the proposed determination from the permitting authority within ninety (90) days of receipt.
- (c) The Control Officer shall have ninety (90) days from receipt of an EPA objection to resolve the objection and to terminate, revise, or revoke and reissue the permit in accordance with the Administrator's objection.
- (d) If the Control Officer fails to submit a proposed determination pursuant to paragraph (a) of Section 12.5.2.16, or fails to resolve the Administrator's objection pursuant to paragraph (b) of Section 12.5.2.16, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

- (1) Providing at least thirty (30) days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (a) through (c) of Section 12.5.2.16; and
- (2) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

12.5.2.17 Public Participation

The Control Officer shall provide for public notice, comment, and an opportunity for a hearing on initial permit issuance, significant revisions, reopenings for cause, and renewals in accordance with the following procedures.

- (a) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Control Officer, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.
- (b) The notice shall identify the Part 70 source; the name and address of the permittee; the activity or activities involved in the permit action; the emissions change involved in any permit revision; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials (including any compliance plan or compliance and monitoring certifications), and all other materials available to the Control Officer that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.
- (c) The Control Officer shall provide such notice and opportunity for participation by affected states as provided for by Section 12.5.2.18.
- (d) **Timing.** The Control Officer shall provide at least thirty (30) days for public comment and shall give notice of any public hearing at least thirty (30) days in advance of the hearing.
- (e) The Control Officer shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

12.5.2.18 Permit Review by EPA and Affected States

(a) Transmission of Information to EPA.

- (1) The Control Officer shall provide to EPA a copy of each permit application, including any application for permit revision, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Control Officer to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Control Officer may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in a computer-readable format compatible with EPA's national database management system.**
- (2) The Control Officer shall keep for five (5) years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.**

(b) Review by Affected States

- (1) The Control Officer shall give notice of each draft permit to any affected state on or before the time that the Control Officer provides this notice to the public under paragraph (a) of Section 12.5.2.17, except to the extent that paragraphs (a) or (b) of Section 12.5.2.14 requires the timing of the notice to be different.**
- (2) The Control Officer, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit revision application, shall notify EPA and any affected state in writing of any refusal by the Control Officer to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the Control Officer's reasons for not accepting any such recommendation. The Control Officer is not required to accept recommendations that are not based on applicable requirements or the provisions of Section 12.5.2.**

(c) EPA Objection

- (1) If EPA objects to the issuance of a permit in writing within forty-five (45) days of receipt of the proposed permit and all neces-**

sary supporting information, then the Control Officer shall not issue the permit.

(2) Failure of the Control Officer to do any of the following shall constitute grounds for an objection by EPA:

(A) Comply with paragraph (a) or (b) of Section 12.5.2.18;

(B) Submit any information necessary to adequately review the proposed permit; or

(C) Process the permit under the procedures in Section 12.5.2.17.

(3) If the Control Officer fails, within ninety (90) days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the federal program promulgated under 40 CFR Part 71.

(d) **Public Petitions to EPA.** If EPA does not object in writing under paragraph (c) of Section 12.5.2.18, any person may petition EPA under the provisions of 40 CFR 70.8(d) within sixty (60) days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Control Officer shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Section 12.5.2.17, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Control Officer has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit consistent with the procedures in 40 CFR 70.7(g), except in unusual circumstances, and the Control Officer may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(e) **Prohibition on Default Issuance.** The Control Officer shall not issue an operating permit, including a permit renewal or revision, until affected states and EPA have had an opportunity to review the proposed permit as required under Section 12.5.2.18.

12.5.2.19 Temporary Sources

- (a) The Control Officer may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one (1) change of location during the term of the permit. No acid rain source or a source subject to the provisions of Section 112 of the Act shall be permitted as a temporary source. Permits for temporary sources shall include the following:
- (1) Conditions that will assure compliance with all applicable requirements at all authorized locations;
 - (2) Requirements that the owner or operator notify the Control Officer at least ten (10) days in advance of each change in location; and
 - (3) Conditions that assure compliance with all other provisions of Section 12.

12.5.2.20 Part 70 General Permit

- (a) The Control Officer may, after notice and opportunity for public participation provided under 40 CFR Part 70.7(h), issue a Part 70 general permit covering numerous similar Part 70 sources.
- (b) Any general permit shall comply with all requirements applicable to other Part 70 Operating Permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Control Officer shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of Section 12.5.2.9, the source shall be subject to enforcement action for operation without a Part 70 Operating Permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the Acid Rain Program unless otherwise provided in regulations under Title IV of the Act.
- (c) Part 70 sources that would qualify for a general permit must apply to the Control Officer for coverage under the terms of the general permit, or must apply for an individual Part 70 Operating Permit. The Control Officer may, in the general permit, provide for applications which deviate from the requirements of Section 12.5.2.3, provided that such applications meet the requirements of Section 12.5.2.20 and include all information necessary to determine qualification of, and to assure compliance with, the general permit. Without repeating the public participation procedures required under Section 12.5.2.17, the Control Officer may grant a source's request for authorization to

operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

- (d) If the Administrator does not object within forty-five (45) days after receiving a proposed Part 70 general permit which covers stationary Sources that would otherwise be required to apply for individual Part 70 Operating Permits, the general permit becomes effective at the end of the 45-day period. If the Administrator objects to the general permit, the Part 70 general permit becomes effective only when the objection is resolved.
- (e) After the effective date of a Part 70 general permit, the owner or operator of any stationary source that meets the criteria set forth in the Part 70 general permit may request authority to operate under the Part 70 general permit. The request must be in writing and must include all information required by the Part 70 general permit.

CLARK COUNTY**AIR QUALITY REGULATIONS****SECTION 25 - UPSET/BREAKDOWN, MALFUNCTIONS**

~~25.1 Operation of any plant or equipment which causes EMISSIONS of air contaminants in excess of limits set by these Regulations is in violation of these Regulations unless:~~

~~25.1.1 Such EMISSIONS resulted from a Malfunction. In determining whether or not a Malfunction has occurred, the CONTROL OFFICER, HEARING OFFICER, or HEARING BOARD may utilize the following guidelines: The burden of proof shall be upon the OPERATOR.~~

~~1) The air pollution control equipment, process equipment, or processes involved in the incident, were at all times maintained and operated in a manner reasonably consistent with good practice for minimizing emissions;~~

~~2) Repairs were made in an expeditious fashion when the OPERATOR knew or should have known that applicable emission limitations were being exceeded. The OPERATOR must have employed his best efforts to use off-shift labor and overtime to insure that such repairs were made as expeditiously as possible;~~

~~3) The amount and duration of the excess EMISSIONS were minimized in a manner reasonably consistent with good practice during periods of such emissions;~~

~~4) The excess EMISSIONS were not part of an historical pattern indicative of inadequate design;~~

~~5) No additional course of action other than that actually taken could reasonably have been implemented by the OPERATOR.~~

~~25.1.2.1 Exceptions:~~

~~25.1.2.2 For those chemical processes specified in Subsection 26.1.2.7 a malfunction under these regulations shall not provide a defense for any EMISSION in excess of the limit established for Subsection 26.1.2.7 (4).~~

~~25.1.3 If the EMISSIONS resulted from an UPSET/BREAKDOWN the OPERATOR shall provide to the CONTROL OFFICER a written explanation of the cause of the UPSET/BREAKDOWN. If the OPERATOR demonstrates to the satisfaction of the CONTROL OFFICER that the EMISSIONS were the result of a Malfunction, then no further action shall be taken by the CONTROL OFFICER. If the CONTROL OFFICER is not satisfied that the EMISSION resulted from a Malfunction, he may issue a citation to the OPERATOR to appear before the HEARING OFFICER or HEARING BOARD or he may require corrective action.~~

~~25.1.4 UPSET/BREAKDOWN, Scheduled Maintenance, or Malfunction under these Regulations shall not provide a defense for any release of excess air contaminants~~

~~(1) which causes or significantly contributes to a violation of any air quality standard listed in Section 11 of these regulations, or~~

~~(2) which causes or significantly contributes to~~

~~(a) an intense cloud equivalent to a visual range less than five (5) miles as measured by an integrating nephelometer or equivalent instrument; or~~

~~(b) a discernible plume emanating from the stationary source and extending horizontally at or near ground level beyond the property line of the stationary source to a publicly accessible area.~~

~~25.1.4.1 In the event that the release of excess air contaminants is associated with an intense cloud, the CONTROL OFFICER shall demonstrate with available data that the release itself caused or significantly contributed to the intensity of the cloud.~~

~~25.2 Reporting and Consultation:~~

~~25.2.1 UPSET/BREAKDOWNS or EMERGENCIES, as defined in Section 0 shall be reported to the CONTROL OFFICER within one (1) hour of the onset of the UPSET/BREAKDOWN.~~

~~25.2.2 The OPERATOR shall consult with the CONTROL OFFICER to devise actions designed to minimize the impact of excess EMISSIONS.~~

History: Amended: March 27, 1980; September 3, 1981; April 21, 1983; July 8, 1985; November 18, 1993; December 19, 1996; April 9, 2001; June 3, 2003; July 1, 2004.

SECTION 25: AFFIRMATIVE DEFENSE FOR EXCESS EMISSIONS DUE TO MALFUNCTIONS, STARTUP, AND SHUTDOWN

<u>25.1</u>	<u>Applicability.....</u>	<u>1</u>
<u>25.2</u>	<u>Affirmative Defense for Malfunctions.....</u>	<u>1</u>
<u>25.3</u>	<u>Affirmative Defense for Startup and Shutdown.....</u>	<u>2</u>
<u>25.4</u>	<u>Affirmative Defense for Malfunctions During Scheduled Maintenance.....</u>	<u>3</u>
<u>25.5</u>	<u>Demonstration of Reasonable and Practicable Measures.....</u>	<u>3</u>
<u>25.6</u>	<u>Reporting of Excess Emissions.....</u>	<u>3</u>

25.1 Applicability

25.1.1 Section 25 establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for the following standards or limitations:

- (a) Promulgated pursuant to Sections 111 or 112 of the Act;
- (b) Promulgated pursuant to Titles IV or VI of the Act;
- (c) Contained in any Prevention of Significant Deterioration Authority to Construct Permit or Nonattainment Area New Source Review (NSR) Authority to Construct Permit issued directly by EPA; or
- (d) Included in an Authority to Construct Permit in order to satisfy the requirements of Section 12.2.10.

25.2 Affirmative Defense for Malfunctions

25.2.1 Emissions in excess of an applicable emission limitation due to a malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 25.6 and has demonstrated all of the following:

- (a) The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
- (b) The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
- (c) If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;
- (d) The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;

- (e) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
- (f) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (g) During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Section 11 that could be attributed to the emitting source;
- (h) The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;
- (i) All emissions monitoring systems were kept in operation if at all practicable; and
- (i) The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.

25.3 Affirmative Defense for Startup and Shutdown

25.3.1 Except as provided in Section 25.3.2, and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 25.6 and has demonstrated all of the following:

- (a) The excess emissions could not have been prevented through careful and prudent planning and design;
- (b) If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
- (c) The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
- (d) The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;

- (e) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
- (f) During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Section 11 that could be attributed to the emitting source;
- (g) All emissions monitoring systems were kept in operation if at all practicable; and
- (h) The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.

25.3.2 If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to Section 25.2.

25.4 Affirmative Defense for Malfunctions During Scheduled Maintenance

If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to Section 25.2.

25.5 Demonstration of Reasonable and Practicable Measures

For an affirmative defense under Section 25, the owner or operator of the source shall demonstrate, through submission of the data and information required by Section 25.6, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.

25.6 Reporting of Excess Emissions

25.6.1 The owner or operator of any source required to obtain a permit under Section 12 shall report to the Control Officer emissions in excess of an applicable requirement or the emission limits prescribed by the permit. The report shall be in two (2) parts:

- (a) Notification by telephone, facsimile or electronic mail within twenty-four (24) hours of the time the owner or operator first learns of the excess emissions;
- (b) Written notification by submission of an excess emission report containing the information required by Section 25.6.3 within seventy-two (72) hours of the notification required by paragraph (a) above.

25.6.2 The owner or operator of any source required to obtain a permit under Section 12 shall report to the Control Officer emissions that are in excess of an applicable requirement or emission limit that pose a potential imminent and substantial danger to public health, safety or the environment as soon as possible, but in no case later than twelve (12) hours after the deviation is discovered, with a written report submitted within two (2) days of the occurrence.

25.6.3 An excess emission report shall contain the following information:

- (a) The identity of each stack or other emission point where the excess emissions occurred;
- (b) The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;
- (c) The time and duration or expected duration of the excess emissions;
- (d) The identity of the equipment from which the excess emissions emanated;
- (e) The nature and cause of the emissions;
- (f) The steps taken if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions;
- (g) The steps that were or are being taken to limit the excess emissions; and
- (h) If the source's permit contains procedures governing source operation during periods of startup or malfunction and the excess emissions resulted from startup or malfunction, a list of the steps taken to comply with the permit procedures.

25.6.4 In the case of continuous or recurring excess emissions, the notification requirements of Sections 25.6.1 and 25.6.2 shall be satisfied if the source provides the required notification after excess emissions are first detected and includes in the notification an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to Sections 25.6.1 and 25.6.2.