



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUL 29 2005

Judith A. Schuerman, Ph.D.
Office of Environmental Assessment
Regulation Development Section
Louisiana Department of Environmental Quality
P.O. Box 4313
Baton Rouge, Louisiana 70821-4313

Re: Comments on Proposed Revisions to Adopt NSR Reform

Dear Dr. Schuerman:

Thank you for the opportunity to review and provide comments on your proposed revisions to adopt NSR Reform. Overall, you have incorporated most of the provisions of the Federal NSR Regulations. We have reviewed your proposed regulations and enclosed our comments which we believe will improve your program and ensure that your final regulations will meet the requirements of the Federal program.

If you prefer to adopt regulations that differ from the Federal regulations, we encourage you to discuss your proposed program with us. We believe that such discussions will be beneficial in facilitating communications and help to ensure that you adopt regulations the we can approve.

We appreciate the opportunity to provide these comments. If you have any questions, please call Mr. Stanley M. Spruiell of my staff at (214) 665-7212.

Sincerely yours,

A handwritten signature in black ink that reads "Jeffery Robinson acting for" followed by a stylized signature.

David Neleigh
Chief
Air Permits Section

Enclosure

Comments on Louisiana's Proposed Regulations for NSR Reform

I. General Comments.

1. On June 24, 2005 the D.C. Circuit Court of Appeals, *New York, et al v. U.S. EPA*, No. 02-1387, released its decision on NSR Reform. In the decision, the court:
 - A. Vacated the provisions of the 2002 rule regarding Clean Units and Pollution Control Projects (PCP); and
 - B. Remanded the recordkeeping provisions to EPA for further consideration.

Concerning the court's decision to vacate the Clean Unit applicability test and the Pollution Control Project exclusion, the Louisiana Department of Environmental Quality (LDEQ) should not adopt these provisions into its program. These provisions are identified in the comments which follow.

Concerning the court's remand of recordkeeping provisions to EPA, we ask that LDEQ consider this in its final decision when it adopts its final regulations.

We are currently evaluating the court decision and possible next steps, and we will inform you of any guidance that we receive concerning how the court's decision will affect your program.

2. General Comment relating to equivalency when the State's rule is different from the Federal requirement. The LDEQ has generally proposed to adopt the nonattainment new source review (NNSR) requirements and the prevention of significant deterioration (PSD) requirements from the Federal rules located in 40 CFR 51.165 and 51.166. In many cases, the LDEQ has proposed provisions which differ from the Federal requirements. The LDEQ may adopt regulations that are different from, but equivalent to, the Federal rule. In the following comments, we have identified areas in which the State's proposed regulation is not the same as the corresponding Federal requirement. In such cases, the State must demonstrate that such provision is at least as stringent as the revised base Federal program. See 67 FR 80241 (December 31, 2002). If you desire to adopt provisions that differ from the base Federal program, we encourage you to discuss your proposed program with us. We believe that such discussions will be beneficial in facilitating communications between LDEQ and EPA and help to ensure that LDEQ adopts regulations that EPA can approve.

II. Comments on the proposed Revisions to section 504 – Nonattainment New Source Review Procedures.

1. Comments on section 504.A – Applicability.

- A. We have the following comments on paragraph “A.3”:
- i. LDEQ should remove the first phrase of paragraph “A.3,” which provides an exception as specified in paragraph A.5. Paragraph “A.5” relates to the PCP provisions which have been vacated by the court.
 - ii. LDEQ should remove paragraph “A.3.c” which refers to Clean Units. The court vacated the Clean Unit provisions.
 - iii. LDEQ should remove or revise the last sentence of paragraph “A.3.d” to remove discussion that relates to the Clean Unit provisions that were vacated.
- B. In paragraph “A.4,” LDEQ should remove the first phrase of paragraph “A.4,” which provides an exception as specified in paragraph “A.5.” Paragraph “A.5” relates to the PCP provisions which have been vacated by the court.
- C. LDEQ should remove paragraph “A.5” because the court vacated the PCP provisions.

2. Comments on section 504.D – Nonattainment New Source Review Requirements.

- A. In paragraph “D.9,” LDEQ should remove the reference to a Clean Unit, that the court vacated.
- B. Paragraph “D.9” includes the recordkeeping provisions that the court remanded to EPA, either to provide an acceptable explanation of its “reasonable possibility” standard or to devise an appropriately supported alternative. LDEQ should consider this remand in its final decision concerning whether or not to adopt this provision.
- C. Paragraph “D.9.b” provides that nothing shall be construed to require the owner or operator to obtain, a determination from the administrative authority before beginning construction of an electric utility steam generating unit. Although this meets the requirement of 40 CFR 51.165(a)(6), the record

should clarify that such provision does not relieve the owner or operator from the obligation to comply with any other requirement to obtain approval or permit that is required by the LDEQ, including any such approval or permit required under the approved SIP.

3. Comments on section 504.F – Emission Offsets.

- A. The LDEQ should remove paragraph “F.11” which provides that decreases in emissions at a Clean Unit or PCP are not creditable. The court vacated the Clean Unit and PCP provisions.
- B. The LDEQ should remove paragraph “F.12” which provides decreases at a Clean Unit cannot be used as offsets. The court vacated the Clean Unit provisions.

4. Comment on section 504.G – Clean Unit Test for Emissions Units That are Subject to LAER. The LDEQ should remove paragraph “G.” The court vacated the Clean Unit provisions.

5. Comment on section 504.H – Clean Unit Test for Emissions Units That are Achieve an Emission Limitations Comparable to LAER. The LDEQ should remove paragraph “H.” The court vacated the Clean Unit provisions.

6. Comment on section 504.I -- PCP Exclusion Procedural Requirements. The LDEQ should remove paragraph “I.” The court vacated the PCP provisions.

7. Comments on section 504.J -- Actuals PALs.

- A. Paragraph “J.3.b” differs from Federal requirement in 40 CFR 51.165(f)(3)(ii). The Federal rule requires that the PAL baseline include emissions associated with startup, shutdown and malfunction. The proposed State rule limits this provision to only emissions associated with authorized startup and shutdown and omits emissions associated with malfunction. The LDEQ must demonstrate that its proposed provision is at least as stringent as the Federal provision. One way that LDEQ could make this demonstration is by showing that emissions associated with startups, shutdowns, and malfunctions (other than “authorized” emissions associated with startups and shutdowns) are either: (i) emissions that would be excluded under paragraphs “a.ii” or “b.ii” (under the definition of *baseline actual emissions*) as non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period; or (ii) emissions that would be

excluded under paragraph “b.iii” (under the definition of *baseline actual emissions*) because they exceeded an emission limitation 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. We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.

- B. Paragraph “J.7.d” differs from Federal requirement in 40 CFR 51.165(f)(7)(iv). Federal rule requires that emission calculation purposes include emissions associated with startup, shutdown and malfunction. The proposed State rule limits this provision to only emissions associated with authorized startup and shutdown and omits emissions associated with malfunction. The LDEQ should address this concern as described in item II.7.A above.

8. Comments on section 504.K – Definitions.

A. Definition of *Actual Emissions*.

- i. Paragraph “a” differs from 40 CFR 51.165(a)(1)(xii)(A). The State rule refers to “emissions of a pollutant ...” The Federal rule refers to “emissions of a regulated NSR pollutant ...”
 - ii. Paragraph “b” differs from 40 CFR 51.165(a)(1)(xii)(B). The State rule provides for calculation of actual emissions during a “two-year” period whereas the Federal rule provides for this calculation during a “consecutive 24-month” period. The LDEQ should clarify that its use of a “two-year” period will be the same as EPA’s use of a “consecutive 24-month” period.
2. Definition of *Baseline Actual Emissions*. Paragraphs “a.i” and “b.i” differ from 40 CFR 51.165(a)(1)(xxxv)(A)(1) and (B)(1). The State rule provides that the “average rate shall include ... authorized emissions associated with startups and shutdowns. The Federal rule provides that “average rate shall include ... emissions associated with startups, shutdowns, and malfunctions.” The LDEQ must demonstrate that its proposed provision is at least as stringent as the Federal provision. One way that LDEQ could make this demonstration is by showing that emissions associated with startups, shutdowns, and malfunctions (other than “authorized” emissions associated with startups and shutdowns) are either: (i) emissions that would be excluded under paragraph “a.ii” or “b.ii” as non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-

month period; or (ii) emissions that would be excluded under paragraph “b.iii” because they exceeded an emission limitation 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. We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.

3. Definition of *Clean Unit*. The LDEQ should remove this definition. The court vacated the Clean Unit provisions.
4. Definitions of *Emissions Unit* and *Replacement Unit*.
 - i. Paragraph “b” in the definition of *Emissions Unit* differs from the definition in 40 CFR 51.165(a)(1)(vii)(B). The State rule does not provide that a *replacement unit* is an existing unit.
 - ii. The LDEQ does not include a definition of *replacement unit* as defined in 40 CFR 51.165(a)(1)(xxi) and used in the definition of *emissions unit*. The Federal definition of *replacement unit* provides that no creditable emissions reductions shall be generated from shutting down an existing unit that is replaced. The LDEQ’s proposed program therefore lacks this provision and appears to be less stringent than the Federal program. The LDEQ must either include a definition of *replacement unit* or clarify that its program will not generate emission reduction credits from the shutdown of an existing unit that is replaced by a replacement unit.
5. Definition of *Major Modification*. The LDEQ should remove paragraph “c.viii” which provides that a PCP is not a major modification. The court vacated the provisions for PCP.
6. Definition of *Net Emissions Increase*.
 - i. The LDEQ should remove paragraph “c” which refers to increases and decreases in a Clean Unit. The court vacated the Clean Unit provisions.
 - ii. Paragraph “e.ii” differs from 40 CFR 51.165(a)(1)(vi)(E)(2). The proposed State rule provides that a decrease must be Federally enforceable while the Federal rule provides that the decrease must be enforceable as a practical matter.

- iii. The LDEQ should remove paragraph “e.v” which refers to a decrease that results from PCP or from a Clean Unit. The court vacated the provisions for PCP and Clean Units.
- 7. Definition of *Pollution Control Project (PCP)*. The LDEQ should remove this definition. The court vacated the PCP provisions.
- 8. Definition of *Projected Actual Emissions*. Paragraph “b” differs from 40 CFR 51.165(a)(1)(xxviii)(B)(3) . The proposed State rule provides that the “average rate shall include ... authorized emissions associated with startups and shutdowns.” The Federal rule provides that “average rate shall include ... emissions associated with startups, shutdowns, and malfunctions.” The LDEQ must demonstrate that its proposed provision is at least as stringent as the Federal provision. One way that LDEQ could make this demonstration is by showing that the emissions associated with startups, shutdowns, and malfunctions (other than “authorized” emissions associated with startups and shutdowns) are not authorized emissions. We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.
- 9. Definition of *Reviewing Authority*. This term is not defined in the proposed rule. If this term, or equivalent term, is defined elsewhere in the State’s regulations, please state where the term is defined.
- 10. Definition of *Significant*. The proposed definition is consistent with definition in 40 CFR 51.165(a)(1)(x). However, LDEQ should also cross-reference the major modification significant thresholds in Table 1 in Section L and provide that significant is the lower of the level as stated in State’s definition of *significant* or the applicable major modification significant threshold in Table 1.
- 11. Definition of *Volatile Organic Compounds (VOC)*. This term is not defined in the proposed rule. If this term, or equivalent term, is defined elsewhere in the State’s regulations, please state where the term is defined.

III. Comments on section 509 – Prevention of Significant Deterioration Procedures.

- A. Comments on section 509.A – Applicability Procedures.

1. LDEQ should revise the first sentence of paragraph "A.4.a" to remove reference to an exception specified in paragraph "A.6". Paragraph "A.6" relates to PCP provisions which the court vacated.
2. In paragraph "A.4.a", LDEQ should revise the reference to paragraphs "A.4.c-f" to make the reference consistent with our concerns with paragraphs "A.4.e-f." Specifically, in comment number "III.A.3" we request that LDEQ remove paragraph "A.4.e". After removing this paragraph LDEQ may need to redesignate certain paragraphs currently designated paragraphs "A.4.c-f".
3. LDEQ should remove paragraph "A.4.e" which provides that certain changes at Clean Units will result in no emissions increase. The court vacated the Clean Unit provisions.
4. LDEQ should remove or revise the last sentence of paragraph "A.3.d" to remove discussion that relates to the Clean Unit provisions that the court vacated.
5. LDEQ should remove paragraph "A.6" because the court vacated the PCP provisions.

B. Comments on section 509.B – Definitions.

1. Definition of *Baseline Actual Emissions*. Paragraphs "a.i" and "b.i" differ from 40 CFR 51.166(b)(47)(i)(a) and (ii)(a). The State rule provides that the "average rate shall include ... authorized emissions associated with startups and shutdowns." The Federal rule provides that "average rate shall include ... emissions associated with startups, shutdowns, and malfunctions." One way that LDEQ could make this demonstration is by showing that emissions associated with startups, shutdowns, and malfunctions (other than "authorized" emissions associated with startups and shutdowns) are either: (i) emissions that would be excluded under paragraph "a.ii" or "b.ii" as non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period; or (ii) emissions that would be excluded under paragraph "b.iii" because they exceeded an emission limitation 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. We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.

2. Definition of *Clean Unit*. LDEQ should remove this definition. The court vacated the Clean Unit provisions.
3. Definition of *Federally Enforceable*. 40 CFR 51.166(b)(17) refers to the limitations and conditions that are enforceable by the Administrator, including the limitations and conditions identified in the definition of *Federally Enforceable*. The proposed State rule only refers to limitations and conditions that are enforceable by the “administrative authority” but does not define the term “administrative authority” in §509.
4. Definition of *Major Modification*. The LDEQ should remove paragraph “c.viii” which provides that a PCP is not a major modification. The court vacated the PCP provisions.
5. Definition of *Major Stationary Source*. Table A under paragraph “e” differs from section 169(1) of the Clean Air Act, as amended in 1990. Table A identifies the source categories which are major for PSD if they emit, or have the potential to emit 100 tons per year of any regulated NSR pollutant. Line L in Table A identifies one of these source categories as “municipal incinerators capable of charging 250 tons of refuse per day.” Section 169(1) of the Clean Air (definition of “major emitting facility” (as used for PSD)) identifies this category as “municipal incinerators capable of charging 50 tons of refuse per day.” *Emphasis added*. The change from 250 to 50 tons of refuse per day was enacted in the 1990 amendments to the Clean Air Act. LDEQ should revise its definition to conform to the current definition of “major emitting source.”
6. Definition of *Net Emissions Increase*.
 - i. Paragraph “c.i” provides that an increase or decrease is creditable only if the the administrative authority or “other administrative authority” has not relied on it in issuing a PSD permit. LDEQ needs to clarify what it means by the term “other administrative authority.”
 - ii. LDEQ should remove paragraph “c.ii” which refers to an increase or decrease from a Clean Unit. The court vacated the provisions for Clean Units.
7. Definition of *Pollution Control Project (PCP)*. LDEQ should remove this definition. The court vacated the PCP provisions.

8. Definition of *Projected Actual Emissions*. Paragraph “b” differs from 40 CFR 51.166(b)(40)(ii)(b) . The proposed State rule provides that the “average rate shall include ... authorized emissions associated with startups and shutdowns.” The Federal rule provides that “average rate shall include ... emissions associated with startups, shutdowns, and malfunctions.” The LDEQ must demonstrate that its proposed provision is at least as stringent as the Federal provision. One way that LDEQ could make this demonstration is by showing that the emissions associated with startups, shutdowns, and malfunctions (other than “authorized” emissions associated with startups and shutdowns) are not authorized emissions. We request the LDEQ discuss how it proposes to make this demonstration with EPA prior to adopting this provision.
 9. Definition of *Volatile Organic Compounds*. This term is not defined in the proposed rule. If this term, or equivalent term, is defined elsewhere in the State’s regulations, please state where the term is defined.
- C. **Comments on section 509.L – Air Quality Models.** Paragraph “L.2” differs from the Federal requirement in 40 CFR 51.166(l)(2). The State’s proposed rule allows for an air quality model specified in appendix W of 40 CFR part 51 to be substituted or modified based upon written approval of the “administrative authority.” The administrative authority appears to be the LDEQ. 40 CFR 51.166(l)(2) requires such substitution or modification to be approved by the Administrator.
- D. **Comments on section 509.R – Source Obligation.**
1. In Paragraph “R.6”, LDEQ needs to remove the reference to a Clean Unit, which the court vacated.
 2. Paragraph “R.6” includes the recordkeeping provisions that the court remanded to EPA, either to provide an acceptable explanation of its “reasonable possibility” standard or to devise an appropriately supported alternative. LDEQ should consider this remand in its final decision concerning whether or not to adopt this provision.
 3. Paragraph “R.6.b” provides that nothing shall be construed to require the owner or operator to obtain, a determination from the administrative authority before beginning construction of an electric utility steam generating unit. Although this meets the requirement of 40 CFR 51.166(r)(6), the record should clarify that such provision does not relieve an owner or operator from the

obligation to comply with any other requirement to obtain approval or permit that is required by the LDEQ, including any such approval or permit required under the approved SIP.

- E. Comments on section 509.W – Permit Rescission.** Paragraph “W.2” differs from §52.21(w)(2). As proposed, paragraph “W.2” would allow an owner or operator of a PSD permit issued under any earlier version of section 509 to request a permit rescission. §52.21(w)(2) provides that an “owner or operator ... who holds a [PSD] permit ... which was issued under 40 CFR 52.21 as in effect on July 30, 1987, or any earlier version of this section, may request that the Administrator rescind the permit” *Emphasis added.*
- F. Comments on section 509.X – Clean Unit Test for Emissions Units That are Subject to BACT or LAER.** The LDEQ should remove paragraph “X.” The court vacated the Clean Unit provisions.
- G. Comments on section 509.Y – Clean Unit Test for Emissions Units That are Achieve an Emission Limitations Comparable to BACT.** The LDEQ should remove paragraph “Y.” The court vacated the Clean Unit provisions.
- H. Comments on section 509.Z – PCP Exclusion Procedural Requirements.** The LDEQ should remove paragraph “Z.” The court vacated the PCP provisions.

KEANMILLER

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August 2, 2005

Judith A. Schuerman, Ph.D.
Louisiana Department of Environmental Quality
Office of the Secretary
Legal Affairs and Regulation Development Division
P.O. Box 4302
Baton Rouge, Louisiana 70821-4302

HAND-DELIVERED

Re: Comments on AQ246F and AQ246L (Proposed Rulemaking)
Nonattainment New Source Review and Prevention of Significant
Deterioration (LAC 33:III.504 and 509)
Our File No.: 3645-265

REC'D RECEIPT
AUG -2 P 3:40

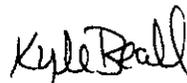
Dear Dr. Schuerman:

The attached comments on the above-referenced proposed rulemaking are presented on behalf of the following associations: the Louisiana Association of Business and Industry, the Louisiana Chemical Association, the Louisiana Electric Utilities Association, the Louisiana Mid-Continent Oil and Gas Association, and the Louisiana Pulp and Paper Association (collectively referred to as the "Associations").

The Associations appreciate the opportunity to comment on the proposed rulemaking currently being considered by the Louisiana Department of Environmental Quality and we request that these comments be placed in the administrative record.

If you have any questions, feel free to contact any of the association members copied on this letter or I can be reached at (225)382-3493 or kyle.beall@keanmiller.com.

Very truly yours,



Kyle B. Beall

cc: Emily Stich, LABI
Henry Graham, LCA
Frank Harbison, LEUA
Richard Metcalf, LMOGA
Blaine Butaud, LPPA

**COMMENTS OF THE LOUISIANA ASSOCIATION OF BUSINESS AND INDUSTRY, THE
LOUISIANA CHEMICAL ASSOCIATION, THE LOUISIANA ELECTRIC UTILITIES
ASSOCIATION, THE LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION, AND
THE LOUISIANA PULP AND PAPER ASSOCIATION**

**Proposed Rulemaking – AQ 246F and AQ246L
Nonattainment New Source Review; Prevention of Significant Deterioration
(LAC 33:III.504 and 509)**

The Louisiana Association of Business and Industry (“LABI”), Louisiana Chemical Association (“LCA”), Louisiana Electric Utilities Association (“LEUA”), the Louisiana Mid-Continent Oil & Gas Association (“LMOGA”), and the Louisiana Pulp and Paper Association (“LPPA”) hereby jointly submit the attached comments to the above-referenced proposed rule. These entities appreciate the opportunity to comment on AQ246F and AQ246L proposed by the Louisiana Department of Environmental Quality (the “LDEQ” or “Department”). The associations also appreciate the consideration made by the Department to the comments submitted on the Advanced Notice of Proposed Rulemaking. Separate individual comments of these entities and/or their members also may be submitted.

I. COMMENTERS

A. Louisiana Association of Business & Industry (LABI)

Founded in 1975, LABI is a statewide association that advocates for an improved business climate in Louisiana. LABI is member-supported, with a membership of approximately 5,000 business owners and operators. Comprised primarily of small businessmen and women, LABI members share the common goals of promoting economic development and bringing strategic focus to business issues before the state’s legislative, judicial and regulatory bodies.

B. Louisiana Chemical Association (LCA)

The LCA is a nonprofit Louisiana corporation, composed of 66 members located at over 94 plant sites in Louisiana. LCA members are vital to the Louisiana economy. The LCA and the Louisiana Chemical Industry Alliance (LCIA) believe what is good for its industry is good for the state economy and in turn good for Louisiana residents. Below are examples of how LCA members provide support to the Louisiana economy:

- Providing nearly 30,000 jobs at an average annual salary of nearly \$55,000
- Creating an additional 6.8 jobs in Louisiana for every new job in the chemical industry
- Bringing \$800 million to the state treasury and local governments through household earnings generated directly and indirectly by the chemical industry
- Donating \$11 million dollars annually-one-third of all monies raised - to the United Way
- Promoting Process Technology (PTEC), a two-year associates degree that prepares people to work in the chemical industry as process operators; providing more than \$200,000 in PTEC scholarships to students at the five Louisiana campuses offering PTEC
- Producing 38.7 percent of the value-added in Louisiana manufacturing

LCA members' commitment to economic growth recognizes the need for careful environmental stewardship. LCA members spend one out of every four dollars on pollution abatement measures - more than any other state. Further, LCA members have reduced Toxic Release Inventory (TRI) emissions by more than 80 percent since 1987.

C. Louisiana Electric Utilities Association (LEUA)

The LEUA is a work group comprised of management personnel with the major electric companies, both regulated and unregulated, operating in the state. LEUA initiates, reviews, and responds to various state regulatory and legislative issues. The legal entities represented by LEUA are:

- AEP Southwestern Electric Power Company
- Association of Louisiana Electric Cooperatives (represented on the NSR reform issue by Louisiana Generating LLC)
- Cleco Power LLC and Cleco Midstream Resources LLC ("Cleco")
- Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; and Entergy New Orleans, Inc. ("Entergy")

Together these electric companies represent the vast majority of the power production resources and electric distribution operations in Louisiana. The companies own or operate 83 generating units capable of producing over 18,800 million watts of power and serving 1,760,000 electric customers in the state.

D. Louisiana Mid-Continent Oil & Gas Association (LMOGA)

The LMOGA is an industry trade association representing individuals and companies who together produce, transport, refine and market crude oil, natural gas, petroleum products and electricity in Louisiana. The LMOGA consists of 16 refineries and numerous production facilities, natural gas plants, compressor stations, and product terminals that would be major sources under the PSD and NNSR rules.

E. Louisiana Pulp & Paper Association (LPPA)

The LPPA is a nonprofit Louisiana corporation, composed of eight member companies and located at 10 pulp and paper facilities in Louisiana. The following additional factors are relevant to the pulp and paper industry in Louisiana:

- Forest industries are the second largest manufacturing employer in Louisiana, providing about 18,282 manufacturing jobs with an annual payroll in excess of \$764 million dollars. In addition, an estimated 8,000 people are employed in harvesting and transportation of timber.
- Since 1996 there has been a significant decrease in the number of employees in the industry, declining from 25,600.

- In 2003 the timber crop generated a value added of over \$2.7 billion, accounting for roughly 61% of the value added by all agricultural crops.
- The annual economic impact of forestry and forest products on Louisiana's economy is over \$3 billion dollars.
- Severance taxes from timber sales range from \$16 to \$20 million dollars annually. Parishes where the timber was grown receive 75% of the monies; the state's general fund receives the remaining 25% of the funds with a portion of the funds representing landowner cost share help for replanting.
- Forest products industries invested almost \$1 billion dollars in new equipment and plants in Louisiana during the last decade, reinforcing the long term strength of forestry in our economy.
- Louisiana landowners reforested the land with over 128 million seedlings, and at least 29 trees for each Louisiana citizen.
- About 48% of Louisiana's land area is forests, making it the state's greatest single land use. Private, non-industrial landowners own 62% of the state's forestland.
- Louisiana's forests support some 180 primary wood-using industries, and 750 secondary wood-using industries located throughout the state's rural areas.

* * *

Nearly all of the member companies of each association are major sources and will be affected by the proposed rulemaking. These Associations request LDEQ to include the comments below in the administrative record for proposed rules AQ246F and AQ246L. We also request that (a) all oral comments provided at any public hearing on the rulemaking and (b) all written comments provided in connection with this rulemaking be incorporated in the administrative record for this docket. The LABI, LCA, LEUA, LMOGA, and LPPA (collectively the "Associations") appreciate the opportunity to submit the following detailed comments on the New Source Review Rule for Louisiana.

II. THE ASSOCIATIONS SUPPORT LDEQ'S PROPOSAL TO ADOPT AQ246F WITH LITTLE OR NO MATERIAL DEVIATION FROM THE FEDERAL NEW SOURCE REVIEW REFORM PACKAGE

The Associations support the fact that LDEQ has proposed AQ246F to adopt the federal New Source Review reform rule without material change. As discussed in more detail in the Association's comments on the Advanced Notice of Proposed Rulemaking, the Associations aver that the Department should adopt the federal NSR Reform package verbatim, except where noted below. This approach will ensure that Louisiana is not put to an economic disadvantage compared to other states that have or will adopt the federal NSR Reform package.¹ Any

¹ On June 10, 2005, EPA issued a notice of final action on reconsideration for the routine maintenance, repair, and replacement rule ("RMRR"), originally published on October 23, 2003. *See*, 70 Fed. Reg. 33,838. In the final

deviation from the federal rule is likely to result in increased permitting delays, uncertainty in the area of business planning for projects and upgrades, lost opportunity costs, and increased administrative costs to the regulated community and to LDEQ when compared to the NSR programs in states that adopt the federal package. Thus, the Associations support version AQ246F as proposed because it avoids these consequences. The Associations have some concern with the provisions of AQ246L as these vary from the federal rule; however, more specific comments on AQ246L are found below, and it is possible that these concerns may be addressed through a dialogue concerning the LDEQ's concerns and intent.

The federal NSR Reform package was the result of in-depth study, public comment and nearly a decade of policy review under both Democratic and Republican administrations. The primary purpose of the NSR Reform was to make the extremely complex PSD and NSR provisions more straightforward and to provide more certainty for investment decisions involving new plants and improvements to existing plants within the regulated community. This certainty would avoid the years and expense of litigation to both the agencies and the regulated community that uncertainty in interpretations of the existing rules had engendered. The reform rules were initially proposed in 1996 and were not finalized until 2002, after more than a dozen public hearings and meetings throughout the country. See, <http://www.epa.gov/region7/programs/artd/air/nsr/nsrpg.htm>. After the final rule was published, EPA conducted additional studies in order to evaluate petitions for reconsideration that were filed. See Technical Support Document for the PSD and NSR: Reconsideration, EPA-456/R-03-005, October 30, 2003, attached hereto as Exhibit A and made a part hereof.

The federal NSR Reform rules are extremely protective of the environment. These rules are designed to achieve the two primary purposes of the PSD rules: 1) to ensure that the air quality in an area that is already attaining the NAAQS does not deteriorate significantly (i.e., does not exceed the NAAQS and/or result in ambient concentrations above the allowable increment reserved for growth); and 2) that new plants and major modifications to existing major plants use the best available air pollution control technology. It is fundamental to keep these two purposes in mind in reviewing any changes to the PSD program. The PSD program does not operate in a vacuum and is not the primary air pollution control program under the Clean Air Act ("CAA"). Other, more important, programs under the Act, added in the 1990 CAA Amendments, must also be considered. Primary among these is the requirement under CAA Section 112 which directed EPA to adopt rules requiring Maximum Achievable Control Technology ("MACT") for control of hazardous air pollutants, the acid-rain control requirements of Title IV, and the enhanced mobile source and fuel requirements of Title II.

The existence of the MACT, acid-rain, mobile sources and fuels, and NSPS standards provide stringent and overlapping control for most air pollution control sources. The role left for the PSD program is primarily to ensure that available increment for growth is not consumed and pollutant increases from new plants or major source major modifications not already subject to one or more of these more stringent programs is controlled to BACT levels, which are often similar to the requirements in the regulations mentioned above. The commenters appreciate the changes made by the LDEQ in the proposed rule and reiterate its position that the Department should consider the PSD program in the context of the comprehensive tools available to the

notice, the EPA concluded that no additional changes are necessary with the RMRR rulemaking. The Associations urge the LDEQ to propose a rulemaking which tracks the final federal rule on RMRR in the near future.

agency. Furthermore, the LDEQ already possesses the authority to address emission control issues if they arise through other regulatory and rulemaking mechanisms. We believe that such consideration will lead LDEQ to conclude that the federal NSR program, together with the agency's other air pollution control programs provides strong and effective means for ensuring that the purposes of PSD are satisfied.

The Associations are concerned, however, that some of the deviations from the federal NSR Reform package embodied in proposed AQ246L could have total fiscal impacts in excess of a million dollars on the business community and, correspondingly, to the citizens of Louisiana. As such, the Department should analyze the cost benefit and risk benefit impacts of the AQ246L rule separately.

To the extent the Department deviates from the federal rule through the provisions of AQ246L, the Associations reiterate the prior comments submitted in connection with the Advanced Notice of Public Rulemaking concerning cost-benefit analysis requirements. Pursuant to La. R.S. 30:2019.D, whenever the LDEQ engages in a rulemaking process, it must conduct a formal cost-benefit analysis concluding that the environmental and public health benefits of a rule outweigh the social and economic costs reasonably expected to result from the rule. If the LDEQ decides to initiate a rulemaking action to adopt AQ246L, LDEQ must also follow the requirements of La. R.S. 49:953.F which requires the agency to provide a brief summary which explains the basis and rationale for the proposed rule, identifies the data and evidence, if any, upon which the rule is based, and identifies any portions of the proposed rule that differ from federal law or regulation if there is a federal law or regulation which is not identical but which corresponds substantially to the proposed rule.

III. EFFECT OF D.C. CIRCUIT DECISION – *NEW YORK V. EPA* (JUNE 24, 2005)

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit decided the petitions for review of the final EPA NSR Reform rule that were brought by the state of New York and other stakeholders. See, *New York et al. v. EPA*, Case No. 02-1387 (D.C. Cir. 2005). Because AQ246F is based upon the federal rule, the court action affects portions of LDEQ's proposal. The decision of the court upheld most of the federal NSR Reform rule, but vacated two provisions and remanded another. In short, the court upheld the following elements of the NSR Reform rule:

- (1) EPA can allow industry to use a 10-year look back (five years for utilities) to find the 24-month baseline period representing the highest annual utilization rate for establishing past actual emissions;
- (2) EPA can exclude from the post-change emissions all increases associated with production demand unrelated to the change that the source could have achieved during the baseline period (also known as the 'demand growth exclusion'); and
- (3) EPA can use the plantwide applicability limit (PAL) procedure in the NSR Reform rule to give sources greater flexibility to make changes without trigger NSR, provided that they do not exceed a facility-wide emissions cap.

The court vacated the following two parts of the rule relating to the clean units applicability test and pollution control projects:

- (1) EPA cannot excuse clean units from NSR based on their previous status as state of the art controls because the Clean Air Act requires that NSR applicability be triggered based on actual emissions resulting from a change; and
- (2) EPA cannot excuse pollution control projects (PCPs) from NSR based on the net environmental benefit of the project because the Clean Air Act requires that NSR applicability be triggered based on actual emissions resulting from a change.

Finally, the court found that EPA did not adequately explain its recordkeeping provisions that require sources with a “reasonable possibility” of exceeding projected future emissions to keep detailed records but exempting sources who make a subjective decision that “no reasonable possibility” exists for the source to exceed its projected future emissions from any recordkeeping provisions. This portion of the rule was remanded to EPA, not vacated, with instructions to revise the provision or to improve the justification for not requiring recordkeeping.

Because AQ246F contained aspects of the federal rule that were either vacated or remanded, LDEQ must determine what should be done with such portions. The Associations have attached as Exhibit A, a copy of AQ246 F which is marked to show the portions affected by the court decision. The parts vacated by the Court are highlighted in yellow; the part remanded by the Court to EPA is highlighted in green. (As explained in greater detail below, differences from AQ246F proposed in the AQ-246L rule are shown in red.)

With respect to the vacated portions (marked in Attachment A in yellow), the commenters request that the Department remove these portions of the rule from the final rulemaking at this time. If the rules are later changed or the D.C. Circuit decision is overturned, the Department can address such changes in a separate rulemaking. With respect to Nonattainment New Source Review, the vacated portions of the AQ-246F rule are set forth in LAC 33:III.504.A.3.c and d, 504.A.5, 504.D.9, 504.F.11-12, 504.G-I, as well as the relevant definitions in LAC 33:III.504.K. With respect to Prevention of Significant Deterioration, the vacated portions of the AQ-246F rule are set forth in LAC 33:III.509.A.5.e and f, 509.A.6, 509.X-Z, as well as the relevant definitions in LAC 33:III.509.B. This request is being made ONLY AT THIS TIME to ensure that the remaining portions of AQ246F are approvable as final rules by EPA. The Associations do not waive their arguments in support of the vacated portions of the rule that may be raised in any appeal of the D.C. Circuit decision.

With respect to the remanded portion of the rule noted above concerning recordkeeping (marked in Attachment A in green), the Associations request that the final rule *include* these changes as proposed. If the EPA later provides a justification for the recordkeeping concerning projected actual emissions, then no further change will be necessary. If the EPA revises the provision, then the LDEQ can modify the regulation in a subsequent rulemaking. With respect to Nonattainment New Source Review, the remanded portion of the AQ-246F rule is set forth in LAC 33:III.504.D.9-10. With respect to Prevention of Significant Deterioration, the remanded portions of the AQ-246F rule is set forth in LAC 33:III.509.R.6 and 7.

IV. COMMENTS CONCERNING AQ 246L – “LOUISIANA NSR”

A. General

The Associations request that the Department reconsider or explain several changes to the federal rule that have been proposed in AQ 246L. The specific areas of concern are discussed below.

B. Elimination of Malfunctions from Baseline and/or Projected Actual Emissions

The LDEQ’s proposal concerning the treatment of malfunction emissions is confusing and it differs significantly from the federal rule. Under the federal NSR program, malfunction emissions which are compliant with federal standards are included both within “baseline actual emissions” (BAE) and “projected actual emissions” (PAE). It should be stressed that noncompliant malfunction emissions are excluded from the federal definitions. LDEQ’s proposed AQ246L would exclude both compliant and noncompliant malfunction emissions from both the BAE and PAE. It is difficult to discern the LDEQ’s intent here, because LDEQ has historically had differing policies concerning “malfunction” or “upset” or “abnormal” emissions.

It is a mistake for the LDEQ to eliminate malfunction emissions from the definitions of BAE and PAE for a number of reasons. First, it is contrary to longstanding EPA practice and policy. Second, it is contrary to LDEQ historical permitting practices and certain LDEQ rules that are part of the SIP. Third, it is in the public’s best interest that malfunction emissions that do not violate a federal standard are regulated and included in permits rather than being handled “off-permit.” Finally, many states, including neighboring Texas, are adopting the equivalent to the federal rule; thus, Louisiana’s failure to do so will put the state at a disadvantage, both from the perspective of existing businesses and for future economic development.²

The LDEQ should also understand that “malfunctions” exist in three categories - those accounted for by rule (such as the sulfuric acid rule, discussed herein), those caused by third parties (e.g., loss of electrical power from off-site supplier, which a facility may or may not be able to adequately control through back-up systems), and those within the plant’s control (which may be subject to control through a control device such as a scrubber or flare, and those which are not, such as a safety relief valve). Commenters do not contend that all malfunctions are

² Another reason for LDEQ to include compliant malfunction emissions in its program is the negative economic impact that will occur to Louisiana industries in the Baton Rouge Ozone Nonattainment Area if such emissions are not included in the baseline *IF* litigation results in reinstatement of Clean Air Act Section 189 penalty fees for failure to reach the 1-hour ozone attainment deadline in a timely manner. In such a case, Louisiana area industry would be at a disadvantage to similarly situated Texas industries, as Texas intends to adopt the federal NSR provisions respecting malfunction emissions. This is because the baseline calculation for the fee is the lesser of the permit (w/o malfunction in LA but not TX) or actuals (which includes malfunctions). Louisiana should want the baseline as high as possible in order to demonstrate the required reductions, thus, malfunctions should be included in the permit. Texas facilities may pay lesser penalty fee than Louisiana industries would pay for the same fact situation, as Louisiana industries would not have malfunctions in the permits.

suitable for including in permits, and in the BAE and PAE, but clearly there are categories and individual situations in which such is appropriate and even desirable from the agency viewpoint. LDEQ should not develop a blanket rule that precludes inclusion of malfunction emissions when it is appropriate to do so.

In a prior Louisiana Office of Legislative Auditor's report, the LDEQ was criticized for not comparing EIS actual emissions against permitted values. Malfunctions are included in EIS actual emissions so leaving them out of permit sets up an apples-to-oranges type situation. Moreover, from an ozone control planning viewpoint, is it preferable that malfunction emissions of certain types that are subject to some level of prediction and control are included explicitly within the permit application so that the agency can ensure that they are included in actual emissions for planning purposes and are appropriately regulated through permit conditions.

Inclusion of malfunction emissions in a permit is not necessarily the equivalent of including such emissions in the BAE or PAE, as it is clear that not all permitted emissions must be included in the BAE or PAE. However, under the federal NSR rule, the malfunction emissions must be "compliant" and inclusion in permits does give an indication of the "authorization" of such emissions.

The LDEQ should not adopt a regulatory provision that precludes the agency's ability to allow malfunction emissions to be included in the BAE and PAE where such emissions have been authorized under a SIP provision and/or a permit condition adopted through SIP approved permitting procedures. We believe that LDEQ's real concern is that it may be difficult to distinguish compliant from non-compliant malfunction emissions. Or, LDEQ may believe that certain activities, such as use of back-up control equipment specifically designed to control an upset type event is not a "malfunction" emission. However, this is an issue that can, and should, be addressed through SIP-approved regulations such as LDEQ's existing regulations for nitric acid plants and sulfuric acid plants, as discussed below.

- 1. The inclusion of compliant malfunction emissions in NSR emissions calculations has been longstanding EPA policy and is supported for good reasons.**

In the EPA's Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review: Reconsideration, EPA responded to requests for reconsideration of its inclusion of malfunction emissions within BAE and PAE as follows:

The December 31, 2002 rulemaking codifies longstanding Agency policy concerning the treatment of emissions associated with startup, shutdown, and malfunction activities. **In general, emissions during periods of startup, shutdown, and malfunction are included in baseline emissions if they are lawful under the applicable SIP, and not included in the baseline if they are unlawful excess emissions under the SIP.** Our policy on SIP treatment of such emissions was set out in "Policy on Excess Emissions During Startups, Shutdown, Maintenance and Malfunctions," from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, February 15, 1983, and subsequently reaffirmed and clarified in "State Implementation Plans: Policy Regarding Excess

Emissions During Malfunctions, Startup and Shutdown,” from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, September 20, 1999. Both of these documents are, and have been for some time, available on EPA’s searchable database of NSR documents.

(See <http://www.epa.gov/region07/programs/artd/air/policy/search.htm>.)

* * *

Existing Agency policy provides that emissions from malfunctions are generally considered to be excess emissions **to the extent such emissions exceed any applicable emission limitations**. In the preamble, EPA specified that when determining pre-change baseline emissions, the new requirements prohibit sources from counting as part of the baseline actual emissions any emission levels that are not allowed under any legally enforceable limitations and that apply at the time of the project. See 67 FR 80195 (December 31, 2002).

* * *

Petitioners seem to suggest that these types of emissions should be excluded because there is a chance that these emissions could be abnormally high. **In evaluating baseline actual emissions, the question is – “what has the emissions unit historically emitted and were all of these emissions compliant”. The question is not – “should some of these legally permissible emissions, nonetheless, have been avoided”**. Ultimately, the source is accountable for correctly projecting future emissions. If historical emissions are high during a period of high market demand, and the source projects lower emissions during a post-change period in which demand is expected to be the same, the source ultimately bears the risk of being found in non-compliance. Accordingly, the petitioners failed to show that their objection is of central relevance to the outcome of the rule, and the petitioners’ motion to reconsider this point is denied.

(Emphasis added).

2. **LDEQ’s Rules and Permits Have Historically Authorized Certain Types of Malfunction Emissions**

LDEQ has examples in its approved SIP of “authorized” malfunction emissions, although they may not have been termed “malfunctions.” In both LAC 33:III.2307, which regulates emissions from nitric acid plants, and LAC 33:III.1507, which regulates emissions from sulfuric acid plants, the agency authorizes emissions from start-ups, shut-downs, and “on-line operating adjustments” made necessary by upset conditions. LAC 33:III.2307.C.2 provides:

A four-hour exemption from emission regulations may be extended by the administrative authority to plants not subject to 40 C.F.R. Part 60, Subpart G, as incorporated by reference in LAC 33:III.Chapter 30, where upsets have caused excessive emissions and on-line operating changes will eliminate a temporary

condition. A report, in writing, explaining the conditions and duration of the upset and listing the steps necessary to remedy, prevent, and limit the excess emissions shall be submitted to the Office of Environmental Compliance, Surveillance Division within seven calendar days of the occurrence using the procedures provided in LAC 33:I.3925.

LAC 33:III.1507.B.2. contains a nearly identical provision for sulfuric acid plants. These are SIP approved emissions, which clearly indicate that emissions exempted by LDEQ through these procedures are compliant.

LDEQ has also historically permitted and/or authorized emissions resulting from abnormal operating conditions that are controlled by a control device such as a scrubber, flare, incinerator, carbon adsorber and the like. There are examples of LDEQ permits stretching from the late 1960's to the present that include emissions from such control devices that are specifically designed to manage these types of emissions. In other jurisdictions, these types of emissions from control devices have been called "compliant" or "authorized" malfunctions. In many cases, these control measures are required for the exact purpose of ensuring that malfunction emissions do not just go straight to the air, but instead receive the level of treatment that is feasible, even if such level does not reach a 95% or 98% destruction efficiency that may be appropriate for routine or steady-state emissions. Likewise, Title V permits incorporating limitations on scrubbers, flares, incinerators, carbon adsorption systems and the like that have gone through the LDEQ review, public review, and EPA approval process have built in safeguards to ensure that the emissions are legitimate and properly controlled.

LDEQ's policy on this has varied over the years, with some permit writers being willing to include such emissions and others not.³ Much confusion was generated by EPA's policies, but such confusion should now be put to rest by EPA's clear statements that some emissions of these types CAN be authorized pursuant to SIPs and permit conditions. Again, there is no reason for LDEQ to adopt a blanket prohibition on use of malfunction emissions in the BAE and PAE where such emissions are not "non-compliant" with federally applicable requirements.

Perhaps the issue is one of semantics, in that LDEQ is reluctant to embrace the concept of "authorizing" a "malfunction" per se by saying that malfunctions can be included in the BAE and PAE. If that is the case, but LDEQ believes that abnormal emissions directed to a flare, scrubber, incinerator, carbon adsorption system, or the like, which is specifically designed to manage such emissions are acceptable and can be permitted, then LDEQ should adopt nomenclature for such emissions other than "malfunction" and should define malfunction, for the purpose of the AQ246L rule as not including such controlled emissions.

3. Authorization of Certain Malfunction Emissions Is Good Policy

It is good policy for LDEQ to regulate and control malfunction emissions pursuant to permits and rules rather than by handling such emissions "off-permit." By allowing the inclusion of these, LDEQ will encourage facilities to control their malfunction emissions,

³ As just one example, LDEQ has made many changes to the provisions of "General Condition XVII" – which is a standard permit condition dealing with minor emissions from non-routine operations. LDEQ often permitted start-up, shutdown and "controlled" malfunction emissions through this provision.

particularly with new projects. Without a consistent policy, there is no incentive for industries to reduce malfunction emissions through expenditure on control devices. If an industry is to be considered in violation for malfunction emissions regardless of whether they are controlled by a control device or not, why should the expenditure be made?

Further, by establishing a policy to address these in permitting, LDEQ will have better control over its emissions inventories and better means to address ozone formation. By reviewing malfunction emissions as part of the permitting process, the agency can determine whether existing levels of control over these are adequate, or whether additional control is feasible.

4. Failure to adopt the equivalent of the federal rule will result in economic disadvantage to existing industries and will put Louisiana at a competitive disadvantage for future business.

The LDEQ's failure to include malfunction emissions (or some category of controlled abnormal emissions), even where compliant, in the definitions of BAE and PAE implies that LDEQ will not ever authorize such emissions even if federal policy allows such authorization. This will put Louisiana at a substantial economic disadvantage to other states that are adopting the federal rules verbatim. To the best of our knowledge, both Mississippi and Arkansas have already adopted the federal rules verbatim. It is our understanding that Texas intends to do so as well, and will, at a minimum, adopt the same definitions of BAE and PAE as are contained in the federal regulations.

The LDEQ refusal to use the federal language verbatim creates an economic disadvantage in several different ways. First, if the LDEQ will not permit malfunction emissions, even where a SIP or SIP permit condition would be permissible under federal law, then such emissions cannot be considered as "federally permitted releases" requiring reporting under CERCLA. This would cause an extra reporting burden not imposed on existing or new facilities in other states and would also subject such facilities to additional potential enforcement action by the state for "unauthorized emissions."⁴ Second, there would be an economic disadvantage to Louisiana because these extra burdens (reporting and possibility of subjective, uncertain state enforcement for the emissions) would likely result in new facilities or expansion projects to be built elsewhere in states without such burdens.

5. Failure to include malfunction emissions in the permit could significantly impact facilities subject to Clean Air Act section 185 severe nonattainment penalty fees.

Although the EPA rescinded the Clean Air Act Section 185 penalty fees for nonattainment areas that do not meet the 1-hour ozone attainment deadlines in an April 2004

⁴ Keep in mind that it is only "compliant" emissions that are at issue. Where a facility has installed control measures in anticipation of reducing emissions from malfunction events, they should not be punished by treating such emissions as unauthorized. In many cases, these determinations CAN be made up front in the permitting process.

rulemaking,⁵ La. R.S. 30:2066, which authorizes LDEQ to impose such fees, still has not been revoked. On reconsideration, EPA upheld its original decision; however, this issue is still in litigation in the federal appeals court. The court could ultimately reinstate the requirement for such penalty fees. If for some reason they are retained, Louisiana facilities could be at a fiscal disadvantage with respect to similar facilities in other states that follow the EPA NSR regulations verbatim. A key component of calculating the penalty fee is the determination of the “baseline” emissions. The baseline is the lowest of either the permitted or actual emissions from the facility during the baseline period. Actual emissions by rule include malfunction emissions. Permitted emissions would include malfunction emissions under the EPA rule but not under the Department’s rule.

In Louisiana, if a case occurs where the permitted emissions are to be used as the baseline, the future actual emissions (which includes malfunction emissions) are compared to this “lower” permitted number while a facility similarly situated in Texas would compare against a “higher” permitted number due to the inclusion of malfunction emissions in the Texas permit. With the current fee rate of approximately \$7,500 per ton, Louisiana facilities may pay significantly higher penalty fees than Texas facilities if the penalty fee provision is retained by EPA and the Department retains this provision in the final rule. Companies may be less willing to locate new facilities or continue to invest in existing facilities in the Baton Rouge nonattainment area due to this concern.

C. Consequences of Failure to Keep Records

LAC 33:III.509.R.9 of the draft AQ246L rule provides the following with respect to recordkeeping: “If an owner or operator materially fails to comply with the provisions of Paragraph R.6 of this Section, then the calendar year emissions are presumed to equal the source’s potential to emit.” Section 509.R.6 sets forth detailed recordkeeping requirements used by sources to determine projected actual emissions, some of which must be retained by a stationary source for up to 10 years.⁶

⁵ See Final Rule to Implement the 8-Hour Ozone Standard – Phase I, April 15, 2004, at pages 28-29 of 279 in <http://www.epa.gov/ozonedesignations/finalrule.pdf>.

⁶ In part, LAC 33:III.509.R.6.provides:

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

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority within 60 days after the end of each year during which records must be generated under Subparagraph R.6.c of this Section setting out the unit’s annual emissions during the calendar year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority if the annual emissions, in tons per year, from the project identified in Subparagraph R.6.a of this Section, exceed the baseline actual emissions, as documented and maintained in accordance with Clause R.6.a.iii of this Section, by a significant amount, as defined in Subsection B.Significant of this Section, for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained in accordance with Clause

The commenters request that the LDEQ revise this section to remove the presumption that the records required by LAC 33:III.509.R.6 will be considered to be the source's potential to emit if the owner/operator fails to maintain such records for the requisite period. The information considered by the LDEQ in such a situation will vary depending on the particular circumstance. There may be other, better information, easily available concerning the source's potential to emit. This is essentially an issue that should be left up to enforcement discretion depending upon the facts of the situation rather than an enforcement consequence required by rule. The Department should have discretion and flexibility to use all information at its disposal in making a *post hoc* PSD determination. The Associations disagree that there should be a presumption that the source's potential to emit will be presumed exclusively for failure to keep records as subsequent and supplemental information may justify the original presumption on which the PSD determination was made. In the alternative, the language "are presumed" should be changed to "may be presumed."

D. Consequences of Underestimation

LDEQ's draft AQ246L provisions for both NNSR and PSD allow for two explicit alternative consequences if the projected actual emissions ("PAE") of a specific project were assumed to not trigger the program but are later determined to have exceeded a significance threshold. These alternative consequences are: (1) request that the LDEQ limit the potential-to-emit of the affected emissions units as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result, or (2) submit a PSD application within 180 days. See proposed LAC 33:III.504.D.11 and LAC 33:III.509.R.10.

The Associations support the flexibility provided by these two options. We request, however, that LDEQ revise the proposed language and make it explicit in the response to comments that this provision is triggered only when the emissions increase which triggers significant threshold is related to the prior major modification, and is, therefore, subject to PSD or nonattainment NSR review. Under the reform rule, emissions from demand growth would also not be included in the analysis. We believe that is LDEQ's intent, because the portions of the rule refer to "the original project," but the Associations would like to ensure that there is no doubt about this critical point. By statute, the NSR program is only triggered when a physical or operation change "... increases the amount of air pollutant emitted by such source." In both parts C and D of the 1977 CAA amendment, Congress has provided that the term "modification" or "modified" would have the same meaning as under Section 111(a)(4) for the NSPS program. The NSPS program clearly excludes "increases in production hours" from NSR applicability. For this reason, regulated facilities must be given the opportunity to assess NSR applicability based on the nature of the emission increase, instead of being subject to an automatic retroactive PSD application. Section 5.5.4.2 of the EPA's response to comments, dated November 22, 2002,

R.6.a.iii of this Section. Such report shall be submitted to the administrative authority within 60 days after the end of such year. The report shall contain the following:

- i. the name, address, and telephone number of the major stationary source;
 - ii. the annual emissions as calculated in accordance with Subparagraph R.6.c of this Section;
- and
- iii. 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).

states that it is not the intent of the EPA to adopt a requirement that would establish a source's PAE as an enforceable limit and thereby, cap the demand growth of the industry.

It is also clear that if an increase is related to a physical or operational change, then the source may be subject to the major NSR requirements. This is analogous to stating that should the increase be determined to be *not* related to a physical or operational change, then the increase cannot be a result of a major modification subject to NSR/PSD review. We request that the LDEQ revise the draft rule to clarify the important distinctions noted above.

Finally, the Associations request that LDEQ clarify that "affected emissions units" includes any emission unit involved in the netting analysis. The suggested language changes in LAC 33:III.504.D.11 and LAC 33:III.509.R.10 are shown below:

LAC 33:III.504.D.11

11. For a projects originally determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines a that project has resulted or will now result in a significant net emissions increase, the owner or operator must either:

a. request that the administrative authority limit the potential to emit of the affected emissions units (including those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result; or

b. submit a revised permit application within 180 days requesting that the original project be deemed a major modification.

LAC 33:III.504.R.10

10. Revisions to Projected Actual Emissions. For a projects originally evaluated in accordance with Paragraph A.3 of this Section and determined not to result in a significant net emissions increase, if an owner or operator subsequently reevaluates projected actual emissions and determines that the project has resulted or will now result in a significant net emissions increase, the owner or operator shall:

a. request that the administrative authority limit the potential to emit of the affected emissions (Including Those used in netting) as appropriate via federally enforceable conditions such that a significant net emissions increase will no longer result; or

b. submit a revised PSD application within 180 days requesting that the original project be deemed a major modification.

ATTACHMENT A

Kean Miller Review Draft

LA-NSR AQ246F with inserts for comparison to AQ246L

Key

Red lettering – language proposed under AQ246L

Yellow highlight- vacated by D.C. Circuit

~~Green highlight – remand by D.C. Circuit~~

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. Applicability. The provisions of this Section apply to the construction of any new *major stationary source* or to any *major modification* at a major stationary source, as defined herein, provided such source or modification will be located within a nonattainment area so designated pursuant to in accordance with Section 107 of the federal Clean Air Act, and will emit a regulated pollutant for which it is major and for which the area is designated nonattainment. If any provision of this Section, or the application of such provision to any person or circumstance, is held invalid, the remainder of this Section, 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.

1. For an area that is designated incomplete data, transitional nonattainment, marginal, moderate, serious, or severe nonattainment for the ~~one-hour~~ ozone national ambient air quality standard, VOC and NO_x are the regulated pollutants under this Section. VOC and NO_x emissions shall not be aggregated for purposes of determining major stationary source status and significant net emissions increases.

2. ...

3. Except as specified in Paragraph A.5 of this Section, the emissions increase that which would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L. Table I of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

a. Actual-to-Projected-Actual Applicability Test for Projects That Only Involve Existing Emissions Units. The emissions increase of a regulated pollutant shall be calculated by summing the difference between the *projected actual emissions*, as defined in Subsection K of this Section, and the *baseline actual emissions*, as defined in Subsection K of this Section, specifically Subparagraphs a and b of the definition, for each existing emissions unit.

b. Actual-to-Potential Test for Projects That Only Involve Construction of New Emissions Units. The emissions increase of a regulated pollutant shall be calculated by summing the difference between the *potential to emit*, as defined in Subsection K of this Section, from each new emissions unit following completion of the project and the *baseline actual emissions*, as defined in Subsection K of this Section, specifically Subparagraph c of the definition, of these units before the project.

c. Emissions Test for Projects that Involve Clean Units. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

d. Hybrid Test for Projects That Involve Multiple Types of Emissions Units. The emissions increase of a regulated pollutant shall be calculated using the methods specified in Subparagraphs A.3 a-c of this Section, as applicable, with respect to each emissions unit, for each type of emissions unit. For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in Subparagraph A.3.a of this Section for the existing unit and using the method specified in Subparagraph A.3.c of this Section for the Clean Unit.

4. Except as specified in Paragraph A.5 of this Section, the net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L. Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. An owner or operator undertaking a *pollution control project*, as defined in Subsection K of this Section, shall comply with Subsection I of this Section.

6. For any major stationary source with a *plantwide applicability limit (PAL)* for a regulated pollutant, the owner or operator shall comply with Subsection J of this Section.

75. For applications deemed administratively complete in accordance with LAC 33:III.519.A prior to December 20, 2001, the requirements of this Section shall not apply to NO_x increases; furthermore, the 1.40 to 1 VOC internal offset ratio for serious ozone nonattainment areas shall not apply. In such situations, a 1.30 to 1 internal offset ratio shall apply to VOC if lowest achievable emission rate (LAER) is not utilized.

86. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, the provisions of this Section governing serious ozone nonattainment areas shall apply to VOC and NO_x increases. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after June 23, 2003, the provisions of this Section governing severe ozone nonattainment areas shall apply to VOC and NO_x increases.

B. - D.3. ...

4. For any new major stationary source or major modification in accordance with this Section, it shall be assured that the total tonnage of the emissions increase that would result from the proposed construction or modification shall be offset by an equal or greater reduction as applicable, in the actual emissions of the regulated pollutant from the same or other sources in accordance with Paragraph F.9 of this Section. The total tonnage of increased emissions, in tons per year, shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit. A higher level of offset reduction may be required in order to demonstrate that a net air quality benefit will occur.

5. - 8.d. ...

9. For existing emissions units at a major stationary source, other than projects at a Clean Unit or at a source with a PAL, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use, for the purpose of calculating projected actual emissions, the method specified in Subparagraphs K *Projected Actual Emissions* a-c of this Section, the following shall apply:

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

i. a description of the project;

ii. identification of the emissions units whose emissions of a regulated pollutant could be affected by the project; and

iii. a description of the applicability test used to determine that the project is not a major modification for any regulated pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Subparagraph K *Projected Actual Emissions* c of this Section (i.e., demand growth) and an explanation for why such amount was excluded and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Subparagraph D.9.a of this Section to the administrative authority. Nothing in this Subparagraph shall be construed to require the owner or operator of such a unit to obtain any determination from the administrative authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Clause D.9.a of this Section, and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority within 60 days after the end of each year during which records must be generated under Subparagraph D.9.c of this Section setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority of the annual emissions, in tons per year, from the project identified in Subparagraph D.9.a of this Section, exceed the baseline actual emissions, as documented and maintained in accordance with Clause D.9.a of this Section, by a significant amount, as defined in Subsection K of this Section for that regulated pollutant, and if such emissions differ from the preconstruction projection as documented and maintained in accordance with Clause D.9.a of this Section. Such report shall be submitted to the administrative authority within 60 days after the end of such year. The report shall contain the following:

the name, address, and telephone number of the major stationary source.

the annual emissions as calculated in accordance with Subparagraph D.9.c of this Section, and

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).

10. The owner or operator of the source shall make the information required to be documented and maintained in accordance with Paragraph D.9 of this Section available for review upon a request for inspection by the administrative authority of the general public in accordance with the requirements contained in 40 CFR 70.4(b)(3)(viii).

11. FOR PROJECTS ORIGINALLY DETERMINED NOT TO RESULT IN A SIGNIFICANT NET EMISSIONS INCREASE, IF AN OWNER OR OPERATOR SUBSEQUENTLY REEVALUATES PROJECTED ACTUAL EMISSIONS AND DETERMINES THAT A PROJECT HAS RESULTED OR WILL NOW RESULT IN A SIGNIFICANT NET EMISSIONS INCREASE, THE OWNER OR OPERATOR MUST EITHER:

A. REQUEST THAT THE ADMINISTRATIVE AUTHORITY LIMIT THE POTENTIAL TO EMIT OF THE AFFECTED EMISSIONS UNITS AS APPROPRIATE VIA FEDERALLY ENFORCEABLE CONDITIONS SUCH THAT A SIGNIFICANT NET EMISSIONS INCREASE WILL NO LONGER RESULT; OR

B. SUBMIT A REVISED PERMIT APPLICATION WITHIN 180 DAYS REQUESTING THAT THE ORIGINAL PROJECT BE DEEMED A MAJOR MODIFICATION.

E. - F.10. ...

11. Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a Clean Unit or a project as a pollution control project (PCP) cannot be used as offsets.

12. Decreases in actual emissions occurring at a Clean Unit cannot be used as offsets, except as provided in Paragraphs G.8 and H.10 of this Section. Similarly, decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in Subparagraph I.6.d of this Section.

G. Clean Unit Test for Emissions Units That are Subject to LAER. An owner or operator of a major stationary source has the option of using the Clean Unit test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the following provisions.

1. Applicability. The provisions of this Subsection apply to any emissions unit for which the administrative authority has issued a major new source review (NSR) permit within the past 10 years.

2. General Provisions for Clean Units. The following provisions apply to a Clean Unit.

a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance

with Paragraph G.4 of this Section, and before the expiration date, as determined in accordance with Paragraph G.5 of this Section, will be considered to have occurred while the emissions unit was a Clean Unit.

b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in Subparagraph G.6.d of this Section, the emissions unit remains a Clean Unit.

c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in Subparagraph G.6.d of this Section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit requalifies as a Clean Unit in accordance with Subparagraph G.3.c of this Section. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of Subparagraphs A.3.a, b, and d and Paragraph A.4 of this Section as if the emissions unit is not a Clean Unit.

e. Certain Emissions Units with PSD Permits. For emissions units that meet the following requirements, the best available control technology (BACT) level of emissions reductions and/or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for Clean Units under Paragraphs G.3-8 of this Section. For these emissions units, all requirements for the LAER determination under Subparagraphs G.2.b and c of this Section shall also apply to the BACT permit terms and conditions. In addition, the requirements of Clause G.7.a.ii of this Section do not apply to emissions units that qualify for Clean Unit status under this Subparagraph.

i. The emissions unit must have received a prevention of significant deterioration (PSD) permit within the last 10 years and such permit must require the emissions unit to comply with BACT.

ii. The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the effective date of the Clean Unit test provisions in the area.

3. Qualifying or Requalifying to Use the Clean Unit Applicability Test. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in Subparagraphs G.3.a and b of this Section. After the original Clean Unit designation expires in accordance with Paragraph G.5 of this Section or is lost in accordance with Subparagraph G.2.c of this Section, such emissions unit may requalify as a Clean Unit under either Subparagraph G.3.c of this Section or under the Clean Unit provisions in Subsection H of this Section. To requalify as a Clean Unit under Subparagraph G.3.c of this Section, the emissions unit must obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all the criteria in Subparagraph G.3.c of this Section. Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

a. Permitting Requirement. The emissions unit must have received a major NSR permit within the past 10 years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

b. Qualifying Air Pollution Control Technologies. Air pollutant emissions from the emissions unit must be reduced through the use of an air pollution control technology, which includes *pollution prevention* as defined in Subsection K of this Section or work practices, that meets both the following requirements.

i. The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for Clean Unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

ii. The owner or operator made an investment to install the control technology. For the purpose of this determination, an *investment* includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

c. Requalifying for the Clean Unit Designation. The emissions unit must obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit must meet the requirements in Subparagraphs G.3.a and b of this Section.

4. Effective Date of the Clean Unit Designation. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner or operator may begin to use the Clean Unit test to determine whether a project at the emissions unit is a major modification) is determined according to one of the following provisions, as applicable.

a. For original Clean Unit designation and emissions units that requalify as Clean Units by implementing a new control technology to meet current-day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date that provisions for the Clean Unit applicability test are approved by the administrator for incorporation into the State Implementation Plan.

b. For emissions units that requalify for the Clean Unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

5. Clean Unit Designation Expiration. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner or operator may no longer use the Clean Unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to one of the following provisions, as applicable.

a. For any emissions unit that automatically qualifies as a Clean Unit under Subparagraphs G.3.a and b of this Section by implementing new control technology to meet current-day LAER, the Clean Unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or it expires at any time the owner or operator fails to comply with the provisions for maintaining Clean Unit designation in Paragraph G.7 of this Section.

b. For any emissions unit that requalifies as a Clean Unit under Subparagraph G.3.c of this Section using an existing control technology, the Clean Unit

designation expires 10 years after the effective date; or it expires any time the owner or operator fails to comply with the provisions for maintaining Clean Unit designation in Paragraph G.7 of this Section.

6. Required Title V Permit Content for a Clean Unit. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable Title V permit program under 40 CFR Part 70, but no later than when the Title V permit is renewed, the Title V permit for the major stationary source must include the following terms and conditions related to the Clean Unit:

a. a statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this Clean Unit designation applies;

b. the effective date of the Clean Unit designation. If this date is not known when the Clean Unit designation is initially recorded in the Title V permit (e.g., because the air pollution control technology is not yet in service), the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the administrative authority of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

c. the expiration date of the Clean Unit designation. If this date is not known when the Clean Unit designation is initially recorded into the Title V permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the administrative authority of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

d. all emission limitations and work practice requirements adopted in conjunction with the LAER, and any physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput);

e. monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation (see Paragraph G.7 of this Section);

f. terms reflecting the owner's or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in Paragraph G.7 of this Section.

7. Maintaining the Clean Unit Designation. To maintain the Clean Unit designation, the owner or operator must conform to all of the following restrictions. This Paragraph applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects Clean Unit designation only for that pollutant.

a. The Clean Unit must comply with the emission limitations and/or work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit, and subsequently reflected in the Title V permit.

i. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput).

ii. The Clean Unit may not emit above a level that has been offset.

b. The Clean Unit must comply with any terms and conditions in the Title V permit related to the unit's Clean Unit designation.

c. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

8. Offsets and Netting at Clean Units. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (i.e., must not be used in a "netting analysis") or be used for generating offsets, unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires, or unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then, the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

9. Effect of Redesignation on the Clean Unit Designation. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must requalify under the requirements that are currently applicable in the area.

H. Clean Unit Provisions for Emissions Units That Achieve an Emission Limitation Comparable to LAER. The owner or operator of a major stationary source has the option of using the Clean Unit test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the following provisions.

1. Applicability. The provisions of this Subsection apply to emissions units that do not qualify as Clean Units under Subsection G of this Section, but which are achieving a level of emissions control comparable to LAER, as determined by the administrative authority in accordance with this Subsection.

2. General Provisions for Clean Units. The following provisions apply to a Clean Unit, if designated as such in accordance with this Subsection.

a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with Paragraph H.5 of this Section, and before the expiration date, as determined in accordance with Paragraph H.6 of this Section, will be considered to have occurred while the emissions unit was a Clean Unit.

b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, in accordance with Paragraph H.4 of this Section, to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in Subparagraph H.8.d of this Section, the emissions unit remains a Clean Unit.

c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, in accordance with Paragraph H.4 of this Section, to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in Subparagraph H.8.d of this Section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit requalifies as a Clean Unit in accordance with Subparagraph H.3.d of this Section. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of Subparagraphs A.3.a, b, and d and Paragraph A.4 of this Section as if the emissions unit were never a Clean Unit.

3. Qualifying or Requalifying to Use the Clean Unit Applicability Test. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in Subparagraphs H.3.a-c of this Section. After the original Clean Unit designation expires in accordance with Paragraph H.6 of this Section or is lost in accordance with Subparagraph H.2.c of this Section, such emissions unit may requalify as a Clean Unit under either Subparagraph H.3.d of this Section or under the Clean Unit provisions in Subsection G of this Section. To requalify as a Clean Unit under Subparagraph H.3.d of this Section, the emissions unit must obtain a new permit issued in accordance with the requirements in Paragraphs H.7 and 8 of this Section and meet all the criteria in Subparagraph H.3.d of this Section. The administrative authority will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

a. Qualifying Air Pollution Control Technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes *pollution prevention* as defined in Subsection K of this Section or work practices, that meets both the following requirements.

i. The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of Paragraph H.4 of this Section. However, the emissions unit is not eligible for the Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the LAER determinations to which it is compared have resulted in a determination that no control measures are required).

ii. The owner or operator made an investment to install the control technology. For the purpose of this determination, an *investment* includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

b. Impact of Emissions From the Unit. The administrative authority must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an

air quality-related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

c. Date of Installation. An emissions unit may qualify as a Clean Unit even if the control technology on which the Clean Unit designation is based was installed before the effective date of this Subsection. However, for such emissions units, the owner or operator must apply for the Clean Unit designation within two years after the plan requirements become effective. For technologies installed after the plan requirements become effective, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.

d. Requalifying as a Clean Unit. The emissions unit must obtain a new permit, in accordance with requirements in Paragraphs H.7 and 8 of this Section, that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit must meet the requirements in Clause H.3.a.i and Subparagraph H.3.b of this Section.

4. Demonstrating Control Effectiveness Comparable to LAER. The owner or operator may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of Subparagraph H.3.a of this Section according to either Subparagraph H.4.a or b of this Section. Subparagraph H.4.c of this Section specifies the time for making this comparison.

a. Comparison to Previous LAER Determinations. The administrator maintains an on-line database of previous determinations of reasonably available control technology (RACT), BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as any one of the five best-performing similar sources for which a LAER determination has been made within the preceding five years, and for which information has been entered into the RBLC. The administrative authority shall also compare this presumption to any additional LAER determinations of which he or she is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

b. The Substantially-as-Effective Test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under Paragraph H.7 of this Section. The administrative authority shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

c. Time of Comparison

i. Installation Before Effective Date of State Implementation Plan Requirements. The owner or operator of an emissions unit whose control technology is installed before the effective date of plan requirements implementing this Paragraph may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in Paragraph H.6 of this Section.

ii. Installation After Effective Date of State Implementation Plan Requirements. The owner or operator of an emissions unit whose control technology is installed after the effective date of plan requirements implementing this Paragraph must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

5. Effective Date of the Clean Unit Designation. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner or operator may begin to use the Clean Unit test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by Paragraph H.7 of this Section is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

6. Clean Unit Designation Expiration. If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, then the Clean Unit designation expires 10 years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires 10 years from the effective date of the Clean Unit designation, as determined according to Paragraph H.5 of this Section. In addition, for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in Paragraph H.9 of this Section.

7. Procedures for Designating Emissions Units as Clean Units. The administrative authority shall designate an emissions unit a Clean Unit only by issuing a permit through a permitting program that has been approved by the administrator and that conforms with the requirements of 40 CFR 51.160-164, including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit must also meet the requirements in Paragraph H.8 of this Section.

8. Required Permit Content. The permit required by Paragraph H.7 of this Section shall include the following terms and conditions that shall be incorporated into the major stationary source's Title V permit in accordance with the provisions of the applicable Title V permit program under 40 CFR Part 70, but no later than when the Title V permit is renewed:

a. a statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies;

b. the effective date of the Clean Unit designation. If this date is not known when the administrative authority issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the administrative authority of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

c. the expiration date of the Clean Unit designation. If this date is not known when the administrative authority issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the administrative authority of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a

modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

d. all emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to ensure that the control technology continues to achieve an emission limitation comparable to LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER (e.g., possibly the emissions unit's capacity or throughput);

e. monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation (see Paragraph H.9 of this Section);

f. terms reflecting the owner's or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in Paragraph H.9 of this Section.

9. Maintaining Clean Unit Designation. To maintain the Clean Unit designation, the owner or operator must conform to all of the following restrictions. This Paragraph applies independently to each pollutant for which the administrative authority has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

a. The Clean Unit must comply with the emission limitations and/or work practice requirements adopted to ensure that the control technology continues to achieve emissions control comparable to LAER.

b. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to LAER (e.g., possibly the emissions unit's capacity or throughput).

c. The Clean Unit may not emit above a level that has been offset.

d. The Clean Unit must comply with any terms and conditions in the Title V permit related to the unit's Clean Unit designation.

e. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

10. Offsets and Netting at Clean Units. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (i.e., must not be used in a "netting analysis") or be used for generating offsets, unless such use occurs before the effective date of State Implementation Plan requirements adopted to implement this Subsection or after the Clean Unit designation expires, or unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of

determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

11. Effect of Redesignation on the Clean Unit Designation. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost in accordance with Subparagraphs G.2.c and H.2.c of this Section, it must requalify under the requirements that are currently applicable.

I. PCP Exclusion Procedural Requirements

1. Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the administrative authority if the project is listed in Subparagraphs K.Pollution Control Project (PCP).a-f of this Section, or if the project is not listed in Subparagraphs K.Pollution Control Project (PCP).a-f of this Section, then the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the administrative authority consistent with the requirements in Paragraph I.5 of this Section. Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in Paragraph I.2 of this Section, and the notice or permit application must contain the information required in Paragraph I.3 of this Section.

2. Any project that relies on the PCP exclusion must meet the following requirements.

a. Environmentally Beneficial Analysis. The environmental benefit from the emission reductions of pollutants regulated under the Clean Air Act must outweigh the environmental detriment of emissions increases in pollutants regulated under the Clean Air Act. A statement that a technology from Subparagraphs K.Pollution Control Project (PCP).a-f of this Section is being used shall be presumed to satisfy this requirement.

b. Air Quality Analysis. The emissions increases from the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality-related value, such as visibility, 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. Content of Notice or Permit Application. In the notice or permit application sent to the administrative authority, the owner or operator must include, at a minimum, the following information:

a. a description of the project;

b. the potential emissions increases and decreases of any pollutant regulated under the Clean Air Act and the projected emission increases and decreases using the method in Paragraph A.3 of this Section that will result from the project, and a copy of the environmentally beneficial analysis required by Subparagraph I.2.a of this Section;

c. a description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in 40 CFR Part 70;

d. a certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by Subparagraphs I.2.a and b of this Section, in a manner that is consistent with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants;

e. demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by Subparagraph I.2.b of this Section. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

4. Notice Process for Listed Projects. For projects listed in Subparagraphs K.Pollution Control Project (PCP).a-f of this Section, the owner or operator may begin actual construction of the project immediately after notice is sent to the administrative authority, unless otherwise prohibited under requirements of the State Implementation Plan. The owner or operator shall respond to any requests by its administrative authority for additional information that the administrative authority determines is necessary to evaluate the suitability of the project for the PCP exclusion.

5. Permit Process for Unlisted Projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in Subparagraphs K.Pollution Control Project (PCP).a-f of this Section, the project must be approved by the administrative authority and recorded in a Title V permit issued in accordance with the procedures of LAC 33:III.519. This includes the requirement that the administrative authority provide the public with notice of the proposed approval and with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The administrative authority shall address all material comments received by the end of the comment period before taking final action on the permit.

6. Operational Requirements. Upon installation of the PCP, the owner or operator must comply with the requirements of Subparagraphs I.6.a-c of this Section.

a. General Duty. The owner or operator must operate the PCP in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by Subparagraphs I.2.a and b of this Section, in a manner that is consistent with information submitted in the notice or permit application required by Paragraph I.3 of this Section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

b. Recordkeeping. The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in Subparagraph I.6.a of this Section.

c. Permit Requirements. The owner or operator must comply with any provisions in the Title V permit related to use and approval of the PCP exclusion.

d. Generation of Emission Reduction Credits. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets, unless the emissions unit further reduces emissions after qualifying for

the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emission limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

J. Actuals PALs

1. Applicability

a. The administrative authority may approve the use of an actuals PAL for any existing major stationary source, except as provided in Subparagraph J.1.b of this Section, if the PAL meets the requirements of this Subsection. The term "PAL" shall mean "actuals PAL" throughout this Subsection.

b. The administrative authority shall not allow an actuals PAL for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

c. 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 this Subsection, and complies with the PAL permit:

i. is not a major modification for the PAL pollutant;

ii. does not have to be approved through this Section; and

iii. is not subject to the provisions in Paragraph B.1 of this Section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major NSR program).

d. Except as provided under Clause J.1.c.iii of this Section, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

2. Definitions. For purposes of this Subsection, the terms below shall have the meaning herein as follows. When a term is not defined in this Paragraph, it shall have the meaning given in Subsection K of this Section or in the Clean Air Act.

a. Actuals PAL—a PAL based on the baseline actual emissions, as defined in Subsection K of this Section, of all emissions units, as defined in Subsection K of this Section, at the source that emit or have the potential to emit the PAL pollutant.

b. Allowable Emissions—as defined in Subsection K of this Section, except with the following modifications.

i. 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.

ii. An emissions unit's potential to emit shall be determined using the definition in Subsection K of this Section, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

c. Major Emissions Unit—

i. any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

ii. 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 appropriate major stationary source threshold value listed in Subsection L, Table 1 of this Section for the PAL pollutant.

d. Plantwide Applicability Limitation (PAL)—an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subsection.

e. PAL Effective Date—generally the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

f. PAL Effective Period—the period beginning with the PAL effective date and ending 10 years later.

g. PAL Major Modification—notwithstanding the definitions for major modification and net emissions increase in Subsection K of this Section, 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 Permit—the major NSR permit, the minor NSR permit, or the state operating permit under a program that is approved into the State Implementation Plan or the Title V permit issued by the administrative authority that establishes a PAL for a major stationary source.

i. PAL Pollutant—the pollutant for which a PAL is established at a major stationary source.

j. Significant Emissions Unit—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 Subsection K of this Section or in the Clean Air Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Subparagraph J.2.c of this Section.

k. Small Emissions Unit—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 Subsection K of this Section or in the Clean Air Act, whichever is lower.

3. Permit Application Requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the administrative authority 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 or state 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;

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 AUTHORIZED emissions associated with startup, AND 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 Subparagraph J.13.a of this Section.

4. General Requirements for Establishing PALs

a. The administrative authority may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met.

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

ii. The PAL shall be established in a PAL permit that meets the public participation requirements in Paragraph J.5 of this Section.

iii. The PAL permit shall contain all the requirements of Paragraph J.7 of this Section.

iv. 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.

v. Each PAL shall regulate emissions of only one pollutant.

vi. Each PAL shall have a PAL effective period of 10 years.

vii. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Paragraphs J.12-14 of this Section 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 Subsection F of this Section unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. Public Participation Requirement for PALs. Procedures to establish, renew, or increase PALs for existing major stationary sources shall be the same as the procedures for permit issuance in accordance with LAC 33:III.519. These include the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comments. The administrative authority shall address all material comments before taking final action on the permit.

6. Setting the 10-Year Actuals PAL Level

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

b. For newly-constructed units, which do 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 Subparagraph J.6.a of this Section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

7. Contents of the PAL Permit. The PAL permit shall contain, at a minimum, the following information:

a. the PAL pollutant and the applicable source-wide emission limitation in tons per year;

b. the PAL permit effective date and the expiration date of the PAL (PAL effective period);

c. specification that if a major stationary source owner or operator applies to renew a PAL in accordance with Paragraph J.10 of this Section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period, but shall remain in effect until a revised PAL permit is issued by the administrative authority;

d. a requirement that emission calculations for compliance purposes include emissions associated with startup, shutdown, and malfunction;

d. a requirement that emission calculations for compliance purposes include emissions associated with startup, AND shutdown, AND MALFUNCTION;

e. a requirement that, once the PAL expires, the major stationary source is subject to the requirements of Paragraph J.9 of this Section;

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 for each month as required by Subparagraph J.13.a of this Section;

g. a requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Paragraph J.12 of this Section;

h. a requirement to retain the records required under Paragraph J.13 of this Section on site. Such records may be retained in an electronic format;

i. a requirement to submit the reports required under Paragraph J.14 of this Section by the required deadlines;

j. any other requirements that the administrative authority deems necessary to implement and enforce the PAL.

8. PAL Effective Period and Reopening of the PAL Permit

a. PAL Effective Period. The administrative authority shall specify a PAL effective period of 10 years.

b. Reopening of the PAL Permit

i. During the PAL effective period, the administrative authority shall reopen the PAL 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 Subsection F of this Section;

(c). revise the PAL to reflect an increase in the PAL as provided under Paragraph J.11 of this Section.

ii. The administrative authority has the discretion to reopen the PAL permit in order to:

(a). reduce the PAL to reflect newly applicable federal requirements (e.g., new source performance standards (NSPS)) 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 state may impose on the major stationary source;

(c). reduce the PAL if the administrative authority determines that a reduction is necessary to avoid causing or contributing to a national ambient air quality standard (NAAQS) or PSD increment violation, or to an adverse impact on an air quality-related value that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

iii. Except for the permit reopening in Subclause J.8.b.i.(a) of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Paragraph J.5 of this Section.

9. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Paragraph J.10 of this Section shall expire at the end of the PAL effective period, and the following requirements 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 permit established according to the following procedures.

i. Within the time frame specified for PAL renewals in Subparagraph J.10.b of this Section, 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 administrative authority, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Subparagraph J.10.e of this Section, such distribution shall be made as if the PAL had been adjusted.

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

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

c. Until the administrative authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Clause J.9.a.i of this Section, 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* in Subsection K of this Section.

e. The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period, except for those emission limitations that had been established in accordance with Paragraph B.1 of this Section, but were eliminated by the PAL in accordance with the provisions in Clause J.1.c.iii of this Section.

10. Renewal of a PAL

a. The administrative authority shall follow the procedures specified in Paragraph J.5 of this Section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the administrative authority.

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

c. Application Requirements. The application to renew a PAL permit shall contain the following information:

i. the information required in Subparagraphs J.3.a-c of this Section;

ii. a proposed PAL level;

iii. the sum of the potential to emit of all emissions units under the PAL, with supporting documentation;

iv. any other information the owner or operator wishes the administrative authority to consider in determining the appropriate level for renewing the PAL.

d. PAL Adjustment. In determining whether and how to adjust the PAL, the administrative authority shall consider the options outlined in Clauses J.10.d.i-ii of this Section. However, in no case may any such adjustment fail to comply with Clause J.10.d.iii of this Section.

i. If the emissions level calculated in accordance with Paragraph J.6 of this Section is equal to or greater than 80 percent of the PAL level, the administrative authority may renew the PAL at the same level without considering the factors set forth in Clause J.10.d.ii of this Section.

ii. The administrative authority may set the PAL at a level that he or she 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 administrative authority in his or her written rationale.

iii. Notwithstanding Clauses J.10.d.i-ii of this Section:

(a). if the potential to emit of the major stationary source is less than the PAL, the administrative authority shall adjust the PAL to a level no greater than the potential to emit of the source; and

(b). the administrative authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Paragraph J.11 of this Section regarding increasing a PAL.

e. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the administrative authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

11. Increasing a PAL During the PAL Effective Period

a. The administrative authority may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

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

ii. 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 units, exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

iii. The owner or operator shall obtain a major NSR permit for all emissions units identified in Clause J.11.a.i of this Section, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process (e.g., LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

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

b. The administrative authority 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 Clause J.11.a.ii of this Section, plus the sum of the baseline actual emissions of the small emissions units.

c. The PAL permit shall be revised to reflect the increased PAL level in accordance with the public notice requirements of Paragraph J.5 of this Section.

12. Monitoring Requirements for PALs

a. General Requirements

i. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and

manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

ii. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Clauses J.12.b.i-iv of this Section and must be approved by the administrative authority.

iii. Notwithstanding Clause J.12.a.ii of this Section, an owner or operator may also employ an alternative monitoring approach that meets the requirements of Clause J.12.a.i of this Section if approved by the administrative authority.

iv. Failure to use a monitoring system that meets the requirements of this Paragraph 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 Subparagraphs J.12.c-i of this Section:

i. mass balance calculations for activities using coatings or solvents;

ii. CEMS;

iii. CPMS or PEMS; and

iv. emission factors.

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

i. 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;

ii. 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

iii. 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 shall use the highest value of the range to calculate the PAL pollutant emissions unless the administrative authority 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:

i. CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

ii. CEMS must sample, analyze, and record data at least every 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:

i. the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

ii. each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the administrative authority, 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:

i. all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

ii. the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

iii. 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 months of PAL permit issuance, unless the administrative authority 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 PAL permit.

h. Notwithstanding the requirements in Subparagraphs J.12.c-d of this Section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the administrative authority shall, at the time of permit issuance:

i. establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

ii. determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters 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 administrative authority. Such testing must occur at least once every five years after issuance of the PAL.

13. Recordkeeping Requirements

a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Subsection and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

i. a copy of the PAL permit application and any applications for revisions to the PAL; and

ii. each annual certification of compliance in accordance with Title V and the data relied on in certifying the compliance.

14. Reporting and Notification Requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the administrative authority in accordance with the applicable Title V operating permit program. The reports shall meet the following requirements.

a. Semiannual Report. The semiannual report shall be submitted to the administrative authority within 30 days of the end of each reporting period. This report shall contain the following information:

i. the identification of the owner or operator and the permit number;

ii. total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded in accordance with Subparagraph J.13.a of this Section;

iii. 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;

iv. a list of any emissions units modified or added to the major stationary source during the preceding 6-month period;

v. 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;

vi. a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Subparagraph J.12.g of this Section;

vii. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

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

- number;
- i. the identification of the owner or operator and the permit
- was exceeded;
- ii. the PAL requirement that experienced the deviation or that
- iii. emissions resulting from the deviation or the exceedance; and
- iv. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.
- c. Revalidation Results. The owner or operator shall submit to the administrative authority the results of any revalidation test or method within three months after completion of such test or method.

15. Transition Requirements

- a. No administrative authority may issue a PAL that does not comply with the requirements of this Subsection after the administrator has approved regulations incorporating these requirements into the State Implementation Plan.
- b. The administrative authority may supersede any PAL that was established prior to the date of approval of the State Implementation Plan by the administrator with a PAL that complies with the requirements of this Subsection.

GK. Definitions. The terms in this Section are used as defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

~~Act—the Federal Clean Air Act, 42 U.S.C. 7401-7671(q)- repealed.~~

~~*Actual Emissions*—the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Subsection J of this Section. Instead, the definitions of *projected actual emissions* and *baseline actual emissions* in this Subsection shall apply for those purposes.~~

a. In general, *actual emissions* as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period ~~which that~~ precedes the particular date and which is representative of normal major stationary source operation. A different time period shall be allowed upon a determination by the department that it is more representative of normal major stationary 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.

b. The administrative authority may presume that source-specific allowable emissions for the unit are equivalent to the *actual emissions* of the unit.

~~cb.~~ For any emissions unit ~~which that~~ has not begun normal operations on the particular date, *actual emissions* shall equal the allowable emissions of the unit.

~~*Administrator*—the administrator of the USEPA or an authorized representative.~~

~~*Adverse Impact on Visibility*—visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal Class I area. This determination must be made on a case-by-case basis taking~~

into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with:

- a. times of visitor use of the mandatory federal Class I area; and
- b. the frequency and timing of natural conditions that reduce visibility.

This term does not include effects on integral vista as defined at 40 CFR 51.301, Definitions.

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

- a. the applicable standard set forth in 40 CFR Part 60, 61, or 63;
- b. any applicable State Implementation Plan emissions limitation including those with a future compliance date; or
- c. the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

Baseline Actual Emissions—the rate of emissions, in tons per year, of a regulated pollutant, determined as follows.

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

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

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

iii. For a regulated 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 pollutant.

iv. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clause a.ii of this definition.

b. For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the administrative authority for a permit required under this Section, except that the 10-year period shall not include any period earlier than November 15, 1990.

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

i. The average rate shall include fugitive emissions to the extent quantifiable, and AUTHORIZED emissions associated with startups, AND shutdowns, AND MALFUNCTIONS.

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

iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source

must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the *baseline actual emissions* need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Paragraphs F.4 and 5 of this Section.

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

v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clauses b.ii-iii of this definition.

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

d. For a PAL for a major stationary source, the *baseline actual emissions* shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Subparagraph a of this definition, for other existing emissions units in accordance with the procedures contained in Subparagraph b of this definition, and for a new emissions unit in accordance with the procedures contained in Subparagraph c of this definition.

Begin Actual Construction—initiation of physical on-site construction activities on an emissions unit ~~which that~~ are of a permanent nature. Such activities include, but are not limited to, installation of building support 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 that~~ mark the initiation of the change.

Best Available Control Technology (BACT)—as defined in LAC 33:III.509.

Building, Structure, Facility, or Installation—all of the pollutant-emitting activities ~~which that~~ belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, or are under the control of the same person (or persons under common control). 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 two-digit code) as described in the Standard Industrial Classification Manual, 1987.

Clean Air Act—the federal Clean Air Act, 42 U.S.C. 7401-7671(q).

Clean Coal Technology—any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that 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.

Clean Coal Technology—ANY TECHNOLOGY, INCLUDING TECHNOLOGIES APPLIED AT THE PRECOMBUSTION, COMBUSTION, OR POST COMBUSTION STAGE, AT A NEW OR EXISTING FACILITY THAT 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. REPEALED FROM AQ246F.

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

~~Clean Coal Technology Demonstration Project~~—A PROJECT USING FUNDS APPROPRIATED UNDER THE HEADING “DEPARTMENT OF ENERGY-CLEAN COAL TECHNOLOGY,” UP TO A TOTAL AMOUNT OF \$2,500,000,000 FOR COMMERCIAL DEMONSTRATION OF CLEAN COAL TECHNOLOGY, OR SIMILAR PROJECTS FUNDED THROUGH APPROPRIATIONS FOR THE ENVIRONMENTAL PROTECTION AGENCY. THE FEDERAL CONTRIBUTION FOR A QUALIFYING PROJECT SHALL BE AT LEAST 20 PERCENT OF THE TOTAL COST OF THE DEMONSTRATION PROJECT. REPEALED FROM AQ246F.

Clean Unit—any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, that is complying with such BACT/LAER requirements, and qualifies as a Clean Unit in accordance with regulations approved by the administrator in accordance with Subsection G of this Section; or any emissions unit that has been designated by the administrative authority as a Clean Unit, based on the criteria in Subparagraphs H.3.a-d of this Section, using a plan-approved permitting process; or any emissions unit that has been designated as a Clean Unit by the administrator in accordance with 40 CFR 52.21(y)(3)(i)-(iv).

Commence—as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

- a. begun, or caused to begin, a continuous program of actual on-site construction of the major stationary source, to be completed within a reasonable time; or
- b. 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 major stationary source to be completed within a reasonable time.

Construction—any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) ~~which~~ that would result in a change in actual emissions.

Continuous Emissions Monitoring System (CEMS)—all of the equipment that may be required to meet the data acquisition and availability requirements of this Section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Continuous Emissions Rate Monitoring System (CERMS)—the total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

Continuous Parameter Monitoring System (CPMS)—all of the equipment necessary to meet the data acquisition and availability requirements of this Section, to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter values on a continuous basis.

Electric Utility Steam Generating Unit—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.

Emissions Unit—any part of a major stationary source ~~which that~~ emits or would have the potential to emit any regulated pollutant, and includes an *electric utility steam generating unit* as defined in this Subsection. For purposes of this Section, there are two types of *emissions units* as described below.

a. A new emissions unit is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated.

b. An existing emissions unit is any emissions unit that does not meet the requirements in Subparagraph a of this definition.

Federal Class I Area—any federal land that is classified or reclassified as a “Class I” area pursuant to in accordance with the Federal Clean Air Act.

Federal Land Manager—with respect to any lands in the United States, the secretary of the department with authority over such lands.

Federally Enforceable—all limitations and conditions which are *federally enforceable* by the administrator, including those requirements developed pursuant to in accordance with 40 CFR Parts 60, 61, and 63, requirements within any applicable State Implementation Plan, any permit requirements established pursuant to in accordance with 40 CFR 52.21 or under regulations approved pursuant to in accordance with 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

Fugitive Emissions—those emissions ~~which that~~ could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Lowest Achievable Emission Rate—for any source, the more stringent rate of emissions based on the following:

a. the most stringent emissions limitation ~~which that~~ is contained in the implementation plan of any state for such class or category of major stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

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

Major Modification—

a. Any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase, as listed in Subsection L. Table 1 of this Section, of any regulated pollutant for which the stationary source is already major;

b. Any net emissions increase that is considered significant for VOC or NO_x shall be considered significant for ozone. VOC and NO_x emissions shall not be aggregated for the purpose of determining significant net emissions increases;

c. ~~a~~A physical change or change in the method of operation shall not include:

- i. routine maintenance, repair, and replacement;
- ii. use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan ~~pursuant to~~ in accordance with the Federal Power Act;
- iii. use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;
- iv. use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- v. use of an alternative fuel or raw material by a stationary source ~~which that~~:

(a). the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition ~~which that~~ was established after December 12, 1976, ~~pursuant to~~ in accordance with 40 CFR 52.21 or under regulations approved pursuant to in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166; or

(b). the source is approved to use under any permit issued under regulations approved ~~pursuant to~~ in accordance with this Section;

vi. an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition ~~which that~~ was established after December 21, 1976, ~~pursuant to~~ in accordance with 40 CFR 52.21 or regulations approved pursuant to in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166;

vii. any change in ownership at a stationary source;

viii. the addition, replacement, or use of a PCP, as defined in this Subsection, at an existing emissions unit meeting the requirements of Subsection I of this Section. A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion;

viii. the addition, replacement, or use of a PCP, as defined in this Subsection, at an existing emissions unit meeting the requirements of Subsection I of this Section. A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion;

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

(a). the State Implementation Plan for the state in which the project is located; and

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

~~IX. THE INSTALLATION, OPERATION, CESSATION, OR REMOVAL OF A TEMPORARY CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT, PROVIDED THAT THE PROJECT COMPLIES WITH:~~

~~(A). THE STATE IMPLEMENTATION PLAN FOR THE STATE IN WHICH THE PROJECT IS LOCATED; AND~~

~~(B). OTHER REQUIREMENTS NECESSARY TO ATTAIN AND MAINTAIN THE NATIONAL AMBIENT AIR QUALITY STANDARD DURING THE PROJECT AND AFTER IT IS TERMINATED.~~

d. This definition shall not apply with respect to a particular regulated pollutant when the major stationary source is complying with the requirements under Subsection J of this Section for a PAL for that pollutant. Instead, the definition at Subparagraph J.2.g of this Section shall apply.

Major Stationary Source—

- a. any stationary source (including all emission points and units of such source located within a contiguous area and under common control) of air pollutants which emits, or has the potential to emit, any regulated pollutant at or above the threshold values defined in Subsection L. Table 1 of this Section; or
- b. any physical change that would occur at a stationary source not qualifying under Subparagraph a of this definition as a *major stationary source*, if the change would constitute a *major stationary source* by itself;
- c. a *major stationary source* that is major for VOC or NO_x shall be considered major for ozone. VOC and NO_x emissions shall not be aggregated for the purpose of determining *major stationary source* status;
- d. a stationary source shall not be a *major stationary source* due to fugitive emissions, to the extent that they are quantifiable, unless the source belongs to:
 - i. any category in Table A in LAC 33:III.509; or
 - ii. any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act;
- e. a stationary source shall not be a *major stationary source* due to secondary emissions.

Mandatory Federal Class I Area—those federal lands that are ~~I~~nternational ~~P~~arks, ~~N~~ational ~~W~~ilderness areas which exceed 5,000 acres in size, ~~N~~ational ~~M~~emorial ~~P~~arks which exceed 5,000 acres in size, and ~~N~~ational ~~P~~arks which exceed 6,000 acres in size, and ~~which that~~ were in existence on August 7, 1977. These areas may not be redesignated.

Natural Conditions—includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.

Necessary Preconstruction Approvals or Permits—those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

Net Emissions Increase—the amount by which the sum of the following exceeds zero:

- a.i. any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source as calculated in accordance with Paragraph A.3 of this Section; and
- ii. any other creditable increases and decreases in actual emissions at the major stationary source over a period including the calendar year of the proposed increase, up to the date on which the proposed increase will occur, and the preceding four consecutive calendar years. Baseline actual emissions for calculating increases and decreases under this Clause shall be determined as provided in Subsection K. Baseline Actual Emissions of this Section except that Clauses a.iii and b.iv of that definition shall not apply;
 - b. an increase or decrease in actual emissions is creditable only if neither the department nor the administrator has relied on it in issuing a permit for the source under this regulation and, for a decrease, the administrator has not relied on it in issuing a permit under 40 CFR 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs;
 - c. the increase or decrease in emissions did not occur at a Clean Unit, except as provided in Paragraphs G.8 and H.10 of this Section;
 - d. an increase in actual emissions is creditable only to the extent that the new level of allowable emissions exceeds the old level of actual emissions;
 - ed. a decrease in actual emissions is creditable only to the extent that:
 - i. the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions;

- ii. it is federally enforceable at and after the time that actual construction of the particular change begins;
- iii. it has not been relied on by the state in demonstrating attainment or reasonable further progress; ~~and~~
- iv. it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; ~~and~~
- v. the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under 40 CFR 52.21(y) or under regulations approved in accordance with Subsection H of this Section or 40 CFR 51.166(u). That is, once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emissions reductions that were not relied upon in a PCP excluded in accordance with Subsection I of this Section or for a Clean Unit designation are creditable to the extent they meet the requirements in Subparagraph I.6.d of this Section for the PCP and Paragraphs G.8 or H.10 of this Section for a Clean Unit;
- fe. an increase that results from a physical change at a major stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days;
- g. Subparagraph K. *Actual Emissions*.a of this Section shall not apply for determining creditable increases and decreases or after a change.

Nonattainment Area—for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A)-(C) of Section 107(d)(1) of the Federal Clean Air Act.

Pollution Control Project (PCP)—any activity, set of work practices, or project, including pollution prevention as defined in this Subsection, undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects not listed in this definition may qualify for a case-specific PCP exclusion in accordance with the requirements of Paragraphs I.2 and 5 of this Section. The following projects are presumed to be environmentally beneficial in accordance with Subparagraph I.2.a of this Section:

- a. conventional or advanced flue gas desulfurization or sorbent injection for control of SO₂;
- b. electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;
- c. flue gas recirculation, low-NO_x burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x;
- d. regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this Section, hydrocarbon combustion flare means either a flare used to comply with an applicable NSPS or maximum achievable control technology (MACT) standard, including uses of flares during startup, shutdown, or malfunction permitted under such a standard,

or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide;

e. activities or projects undertaken to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following fuel switches:

- i. switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel to CA 0.05 percent sulfur #2 diesel);
- ii. switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;
- iii. switching from coal to wood, excluding construction or demolition waste, chemical- or pesticide-treated wood, and other forms of "unclean" wood;
- iv. switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and
- v. switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content);

f. activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

- i. the productive capacity of the equipment is not increased as a result of the activity or project;
- ii. the projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedures apply:

- (a) determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B;

- (b) calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS;

- (c) calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP;

- (d) if the value calculated in Subclause f.ii.(b) of this definition is more than the value calculated in Subclause f.ii.(c) of this definition, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

Pollution Prevention—any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

Portable Stationary Source—a source which that can be relocated to another operating site with limited dismantling and reassembly.

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

Predictive Emissions Monitoring System (PEMS)—all of the equipment necessary to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

Prevention of Significant Deterioration (PSD) Permit—any permit that is issued under a major source preconstruction permit program that has been approved by the administrator and incorporated into the State Implementation Plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

Project—a physical change in, or change in the method of operation of, an existing major stationary source.

Projected Actual Emissions—the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated 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. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

Projected Actual Emissions —the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated 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. 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 state or federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

b. shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

b. shall include fugitive emissions to the extent quantifiable, and AUTHORIZED emissions associated with startups; AND shutdowns; AND MALFUNCTIONS; and

c. shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions as defined in this Subsection and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

d. in lieu of using the method set out in Subparagraphs a-c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined in this Subsection.

Regulated Pollutant—any air pollutant, the emission or ambient concentration of which is regulated pursuant to in accordance with the Clean Air Act.

Secondary Emissions—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 this Section, *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.

Significant—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:

<u>Pollutant</u>	<u>Emission Rate</u>
<u>Carbon monoxide</u>	<u>100 tons per year (tpy)</u>
<u>Nitrogen oxides</u>	<u>40 tpy</u>
<u>Sulfur dioxide</u>	<u>40 tpy</u>
<u>Ozone</u>	<u>40 tpy of volatile organic compounds</u>
<u>Lead</u>	<u>0.6 tpy</u>

Stationary Source—any building, structure, facility, or installation which emits or may emit any regulated pollutant.

Temporary Clean Coal Technology Demonstration Project—a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the State Implementation Plan for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

~~*Temporary Clean Coal Technology Demonstration Project*—A CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT THAT IS OPERATED FOR A PERIOD OF FIVE YEARS OR LESS, AND THAT COMPLIES WITH THE STATE IMPLEMENTATION PLAN FOR THE STATE IN WHICH THE PROJECT IS LOCATED AND OTHER REQUIREMENTS NECESSARY TO ATTAIN AND MAINTAIN THE NATIONAL AMBIENT AIR QUALITY STANDARDS DURING THE PROJECT AND AFTER IT IS TERMINATED. REPEALED FROM AQ246F.~~

Temporary Source—a stationary source ~~which~~ that changes its location or ceases to exist within one year from the date of initial start of operations.

Visibility Impairment—any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

<p>Table 1 Major Stationary Source/Major Modification Emission Thresholds</p>
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Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone		Trigger Values	
VOC/NO _x ¹			
Marginal ¹	100	40(40) ²	1.10 to 1
Moderate	100	40(40) ²	1.15 to 1
Serious	50	25 ³ (5) ⁴	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER
Severe	25	25 ³ (5) ⁴	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO ₂	100	40	>1.00 to 1
PM ₁₀			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
Lead	100	0.6	>1.00 to 1

¹ For those parishes which that are designated incomplete data or transitional nonattainment for ozone, the new source review rules for a marginal classification apply.

² Consideration of the net emissions increase will be triggered for any project which that would increase emissions by 40 tons or more per year, without regard to any project decreases.

³ For serious and severe ozone nonattainment areas, the increase in emissions of VOC or NO_x resulting from any physical change or change in the method of operation of a stationary source shall be considered significant for purposes of determining the applicability of permit requirements, if the net emissions increase from the source equals or exceeds 25 tons per year of VOC or NO_x.

⁴ Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO_x emissions by five tons or more per year, without regard to any project decreases, or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOC within the contemporaneous period or of NO_x for a period of five years after the effective date of the rescission of the NO_x waiver, and within the contemporaneous period thereafter.

VOC = volatile organic compounds
 NO_x = oxides of nitrogen
 CO = carbon monoxide
 SO₂ = sulfur dioxide
 PM₁₀ = particulate matter of less than 10 microns in diameter

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332

(December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), LR 31:

§509. Prevention of Significant Deterioration

A. ~~Applicability~~

1. ~~The provisions of this Part apply to major stationary sources and major modifications as provided in LAC 33:III.509.I, except that no provision of this part applies to Indian reservations meaning any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.~~

2. ~~An owner or operator of an existing major stationary source or an existing major modification who, as of the effective date of this Chapter, has been issued a permit under the federal program to prevent the significant deterioration of air quality, must also obtain a permit under the provisions of this Part if the source fails to comply with the terms and conditions of the federal permit.~~

B. ~~Definitions. For the purpose of this Part the terms below shall have the meaning specified herein as follows~~

~~*Actual Emissions* the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:~~

1. ~~In general, *actual emissions* as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two year period which precedes the particular date and which is representative of normal source operation. The administrative authority may 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 administrative authority may presume that source specific allowable emissions for the unit are equivalent to the *actual emissions* of the unit.~~

3. ~~For any emissions unit which has not begun normal operations on the particular date, *actual emissions* shall equal the potential to emit of the unit on that date.~~

~~*Administrative Authority* the secretary of the Department of Environmental Quality or his designee or the appropriate assistant secretary or his designee.~~

~~*Adverse Impact on Visibility* visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal Class I area. This determination must be made on a case by case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with:~~

1. ~~times of visitor's use of the federal Class I area; and~~

2. ~~the frequency and timing of natural conditions that reduce visibility.~~

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

1. ~~the applicable standards as set forth in Sections 111 and 112 of the Clean Air Act and in the Louisiana New Source Performance Standards (LNSPS) and the Louisiana Emission Standards for Hazardous Air Pollutants (LESHAP);~~
2. ~~the applicable Louisiana State Implementation Plan emissions limitations, including any with a future compliance date; or~~
3. ~~the emissions rate specified as an enforceable permit condition under a permit issued under a program to prevent the significant deterioration of air quality or under the Louisiana Air Quality Regulations.~~

~~*Baseline Area*~~

1. ~~any area designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 g/m^3 (annual average) of the pollutant for which the minor source baseline date is established;~~
2. ~~all parishes are designated as attainment for all pollutants except the following parishes are designated nonattainment for ozone only:~~
 - a. ~~Ascension~~
 - b. ~~East Baton Rouge~~
 - c. ~~Iberville~~
 - d. ~~Livingston~~
 - e. ~~West Baton Rouge~~

~~*Baseline Concentration*~~

1. ~~That ambient concentration level which 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 provided in Paragraph 2 below;~~
 - b. ~~the allowable emissions of major stationary sources which 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.~~

~~*Baseline Date*~~

1. ~~*Major Source Baseline Date*~~
 - a. ~~in the case of particulate matter (PM₁₀) and sulfur dioxide, January 6, 1975; and~~
 - b. ~~in the case of nitrogen dioxide, February 8, 1988.~~
2. ~~*Minor Source Baseline Date*~~ ~~the earliest date after the trigger date on which a major stationary source or a major modification subject to LAC 33:III.509 submits a complete application under the relevant regulations. The trigger date is:~~
 - a. ~~in the case of particulate matter (PM₁₀) and sulfur dioxide, August 7, 1977; and~~
 - b. ~~in the case of nitrogen dioxide, February 8, 1988.~~

~~*Begin Actual Construction*—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 operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.~~

~~*Best Available Control Technology*—~~

~~1.——An emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under this Part which would be emitted from any proposed major stationary source or major modification which the administrative authority, 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.~~

~~2.——In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by an applicable standard as set forth in Sections 111 and 112 of the Clean Air Act or the Louisiana New Source Performance Standards (LNSPS) and Louisiana Emission Standards for Hazardous Air Pollutants (LESHAP). If the administrative authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.~~

~~*Best Available Retrofit Technology (BART)*—an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.~~

~~*Building, Structure, Facility, or Installation*—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). Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).~~

~~*Commence*—as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:~~

~~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 cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Complete—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 administrative authority from requesting or accepting any additional information.

Construction—any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

Emissions Unit—any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under this Section.

Existing Stationary Facility—any of the stationary sources of air pollutants listed in Table A of this Section, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

Federal Class I Area—any federal land that is classified or reclassified "Class I".

Federal Land Manager—with respect to any lands in the United States, the secretary of the department with authority over such lands.

Fixed Capital Cost—the capital needed to provide all of the depreciable components.

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

In Existence—the owner or operator has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has:

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

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

In Operation—engaged in activity related to the primary design function of the source.

Indian Governing Body—the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Indian Reservation—any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

Innovative Control Technology—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.

Installation—for purposes of visibility, an identifiable piece of process equipment.

Integral Vista—a view perceived from within the mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.

Major Modification—

1. ~~Any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under this Part.~~

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

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 any 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 Federal Clean Air Act;~~

d. ~~use of an alternate fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

e. ~~use of an alternate fuel or raw material by a source which:~~

i. ~~the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit limitation which was established after January 6, 1975; or~~

ii. ~~the source is approved to use under any permit issued by the state or EPA under a program to prevent the significant deterioration of air quality;~~

f. ~~an increase in the hours of operation or in the production rate, unless such change would be prohibited under any enforceable permit limitation which was established after January 6, 1975;~~

g. ~~any change in source ownership.~~

~~*Major Stationary Source—*~~

1. ~~Any of the following stationary sources of air pollutants listed in Table A of this Section which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under this Section.~~

2. ~~Notwithstanding the stationary source size specified in LAC 33:III.509.B, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under this Section; or~~

3. ~~Any physical change that would occur at a source not otherwise qualifying as a *major stationary source* under Paragraphs 1 and 2 above if the change would constitute a major source by itself.~~

4. ~~A major source that is major for volatile organic compounds shall be considered major for ozone.~~

~~*Mandatory Class I Federal Area*—any international park, national wilderness area which exceeds 5,000 acres, national memorial park which exceeds 5,000 acres or national park which exceeds 6,000 acres, in existence on August 7, 1977 and may not be redesignated.~~

~~*Natural Conditions*—includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast, or coloration.~~

~~*Necessary Preconstruction Approvals or Permits*—those permits or approvals required under all applicable air quality control laws and regulations.~~

~~*Net Emissions Increase—*~~

1. ~~The amount by which the sum of the following exceeds zero:~~

a. ~~any increase in actual emissions from a particular physical change or change in the method of operation at a source; and~~

b. ~~any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.~~

2. ~~An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:~~

a. ~~the date five years before construction on the particular change commences; and~~

b. ~~the date that the increase from the particular change occurs.~~

3. ~~An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a permit for the source under a program to prevent significant deterioration of air quality, which permit is in effect when the increase in actual emissions from the particular change occurs.~~

4. ~~An increase or decrease in actual emissions of sulfur dioxide, particulate matter or nitrogen dioxide which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the *net emission increase* for PM₁₀.~~

5. ~~An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

6. ~~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. ~~at and after the time of actual construction on the particular change begins, the decrease is enforceable as an allowable emission limit or as a condition of a permit issued under a program to prevent significant deterioration of air quality or under the Louisiana Air Quality Regulations; and~~

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

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

~~*Potential to Emit*—the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable as an allowable emission limit or as a condition of a permit issued under a program to prevent the significant deterioration of air quality or under Louisiana Air Quality Regulations. Secondary emissions do not count in determining the *potential to emit* of a stationary source.~~

~~*Reasonably Attributable*—attributable by visual observation or any other technique the state deems appropriate.~~

~~*Reconstruction*—will be presumed to have taken place where the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source.~~

Any final decision as to whether reconstruction has occurred must be made in accordance with the provisions of 40 CFR 60.15(f).(1) (3), as incorporated by reference in LAC 33:III.Chapter 30.

Secondary Emissions—emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this Section, *secondary emissions* must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the *secondary emissions*. *Secondary emissions* may include, but are not limited to:

1. — emissions from ships or trains coming to or from the new or modified stationary source; and
2. — emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

Significant—

1. — 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.

Carbon monoxide	100	tens per year (tpy)
Nitrogen oxides	40	tpy
Sulfur dioxide	40	tpy
Particulate matter	25	tpy of particulate emissions
	15	tpy of PM ₁₀ emissions
Ozone	40	tpy of volatile organic compounds
Lead	0.6	tpy
Asbestos	0.007	tpy
Beryllium	0.0004	tpy
Mercury	0.1	tpy
Vinyl chloride	1	tpy
Fluorides	3	tpy
Sulfuric acid mist	7	tpy
Hydrogen sulfide (H ₂ S)	10	tpy
Total reduced sulfur (including H ₂ S)	10	tpy
Reduced sulfur compounds (including H ₂ S)	10	tpy

2. — *Significant* in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act that LAC 33:III.509.B.*Significant.1*, does not list, any emission rate.

3. — Notwithstanding LAC 33:III.509.B.*Significant.1* and 2, *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 1µg/m³, (24 hour average).

Significant Impairment—visibility impairment, which, in the judgment of the administrative authority, interferes with the management, protection, preservation, or enjoyment of the visitor's

~~visual experience of the mandatory Class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of the visibility impairment, and how these factors correlate with (1) times of visitor use of the mandatory Class I federal area, and (2) the frequency and timing of natural conditions that reduce visibility.~~

~~*Stationary Source*—any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under this Section.~~

~~*Visibility Impairment*—any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.~~

~~*Visibility in any Mandatory Class I Federal Area*—includes any integral vista associated with that area.~~

Table A

- 1) ~~— Fossil fuel fired steam electric plants of more than 250 million British thermal units (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 mill plants~~
- 7) ~~— Primary aluminum ore reduction plants~~
- 8) ~~— Primary copper smelters~~
- 9) ~~— Municipal incinerators capable of charging more than 250 tons of refuse per day~~
- 10) ~~— Hydrofluoric, sulfuric, and 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 combinations 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~~
- C. ~~— Area Classification~~

~~1. Louisiana is divided into three Air Quality Control Regions which are designated as the Southern Region (AQCR 106), Northwest Region (AQCR 022), and Northeast Region (AQCR 019). In Figure 1, the boundary lines of the Air Quality Regions are shown.~~

2. ~~Each Air Quality Control Region is classified as Class II with the exception of those areas enumerated in LAC 33:III.509.C.3.~~

3. ~~Restrictions on Area Classifications~~

a. ~~The following area which was in existence on August 7, 1977, shall be Class I and may not be redesignated: Breton National Wildlife Refuge.~~

D. ~~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. 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.~~

Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Class I	
Particulate matter:	
-PM ₁₀ , Annual arithmetic mean	4
-PM ₁₀ , 24 hr maximum	8
Sulfur dioxide:	
-Annual arithmetic mean	2
-24 hr maximum	5
-3 hr maximum	25
Nitrogen dioxide:	
-Annual arithmetic mean	2.5
Class II	
Particulate matter:	
-PM ₁₀ , Annual arithmetic mean	17
-PM ₁₀ , 24 hr maximum	30
Sulfur dioxide:	
-Annual arithmetic mean	20
-24 hr maximum	91
-3 hr maximum	512
Nitrogen dioxide:	
-Annual arithmetic mean	25
Class III	
Particulate matter:	
-PM ₁₀ , Annual arithmetic mean	34
-PM ₁₀ , 24 hr maximum	60
Sulfur dioxide:	
-Annual arithmetic mean	40
-24 hr maximum	182
-3 hr maximum	700
Nitrogen dioxide:	
-Annual arithmetic mean	50

E. ~~Ambient Air Ceilings. No concentration of a pollutant shall exceed:~~

1. ~~the concentration permitted under the secondary ambient air quality standard (LAC 33:III.711.B, Table 1a); or~~

~~2. the concentration permitted under the primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.~~

~~F. Exclusions from Increment Consumption~~

~~1. The administrative authority shall exclude the following concentrations in determining compliance with a maximum allowable increase:~~

~~a. 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 Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order. No exclusion of such concentrations shall apply more than five years after the effective date of such an order;~~

~~b. concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan. No exclusion of such concentrations shall apply more than five years after the effective date of such plan;~~

~~c. concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission related activities of new or modified sources; and~~

~~d. the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration.~~

~~G. Redesignation. Redesignation of areas of the state shall be in accordance with applicable state and federal laws.~~

~~H. Stack Heights~~

~~1. The degree of emission limitation required for control of any air pollutant under this Part shall not be affected in any manner by:~~

~~a. so much of the stack height of any source as exceeds good engineering practice as provided in the Louisiana Air Quality Regulations; or~~

~~b. any other dispersion technique.~~

~~2. LAC 33:III.509.H.1 shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.~~

~~I. Review of Major Stationary Sources and Major Modifications Applicability and Exemptions~~

~~1. No major stationary source or major modification to which the requirements of this Part apply shall begin actual construction without a permit issued under this Section.~~

~~2. The requirements of LAC 33:III.509.J-R shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under this Section that it would emit, except as this Section otherwise provides.~~

~~3. The requirements of LAC 33:III.509.J-R apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable as specified in LAC 33:III.509.B. *Baseline Area*.~~

~~4. The requirements of LAC 33:III.509.J-R shall not apply to a particular major stationary source or major modification if:~~

~~a. the major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or~~

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

~~i. coal cleaning plants (with thermal dryers);
 ii. kraft pulp mills;
 iii. Portland cement plants;
 iv. primary zinc smelters;
 v. iron and steel mills;
 vi. primary aluminum ore reduction plants;
 vii. primary copper smelters;
 viii. municipal incinerators capable of charging more than 250 tons of refuse per day;~~

~~ix. hydrofluoric, sulfuric, or nitric acid plants;
 x. petroleum refineries;
 xi. lime plants;
 xii. phosphate rock processing plants;
 xiii. coke oven batteries;
 xiv. sulfur recovery plants;
 xv. carbon black plants (furnace process);
 xvi. primary lead smelters;
 xvii. fuel conversion plants;
 xviii. sintering plants;
 xix. secondary metal production plants;
 xx. chemical process plants;
 xxi. fossil fuel fired boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 xxii. petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 xxiii. taconite ore processing plants;
 xxiv. glass fiber processing plants;
 xxv. charcoal production plants;
 xxvi. fossil fuel fired steam electric plants of more than 250 million~~

~~British thermal units per hour heat input;~~

~~xxvii. any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act or the Louisiana New Source Performance Standards (LNSPS) or Louisiana Emission Standards for Hazardous Air Pollutants (LESHAP); or~~

~~c. the source is a portable stationary source which has previously received a permit under this Section, if:~~

~~i. the owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and
 ii. the emissions from the source would not exceed its allowable emissions; and~~

~~iii. the emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and~~

~~iv. — reasonable notice is given to the administrative authority prior to the relocation identifying the proposed new location and probable duration of operation at that location. Such notice shall be given to the administrative authority not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the administrative authority.~~

~~5. — The requirements of LAC 33:III.509.J-R shall not apply to a major stationary source or major modification with respect to particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment as specified in LAC 33:III.509.B. *Baseline Area*.~~

~~6. — The requirements of LAC 33:III.509.K, M and O shall not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.~~

~~7. — The requirements of LAC 33:III.509.K, M and O as they relate to any maximum allowable increase for a Class II area shall not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under this Section from the modification after the application of best available control technology would be less than 50 tons per year.~~

~~8. — The administrative authority may exempt a proposed major stationary source or major modification from the requirements of LAC 33:III.509.M with respect to monitoring for a particular pollutant if:~~

~~a. — the emissions increase of the pollutant from the new stationary source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts.~~

Carbon monoxide	575 µg/m ³	8-hour average;
Nitrogen dioxide	14 µg/m ³	annual average;
Particulate matter	10 µg/m ³ PM ₁₀	24-hour average;
Sulfur dioxide	13 µg/m ³	24-hour average;
Ozone	No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data;	
Lead	0.1 µg/m ³	3-month average;
Mercury	0.25 µg/m ³	24-hour average;
Beryllium	0.001 µg/m ³	24-hour average;
Fluorides	0.25 µg/m ³	24-hour average;
Vinyl chloride	15 µg/m ³	24-hour average;

Total reduced sulfur	10 $\mu\text{g}/\text{m}^3$	1-hour average;
Hydrogen sulfide	0.2 $\mu\text{g}/\text{m}^3$	1-hour average;
Reduced-sulfur compounds	10 $\mu\text{g}/\text{m}^3$	1-hour average; or

b. ~~the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in LAC 33:III.509.1.8.a; or~~

c. ~~the pollutant is not listed in LAC 33:III.509.1.8.a.~~

J. ~~Control Technology Evaluation~~

1. ~~A major stationary source or major modification shall meet each applicable emissions limitation under the Louisiana State Implementation Plan and each applicable emissions standard and standard of performance under the Louisiana New Source Performance Standards (LNSPS) and Louisiana Emission Standards for Hazardous Air Pollutants (LESHAP) and Sections 111 and 112 of the Clean Air Act.~~

2. ~~A new major stationary source shall apply best available control technology for each pollutant subject to regulation under this Section that it would have the potential to emit in significant amounts.~~

3. ~~A major modification shall apply best available control technology for each pollutant subject to regulation under this Section which would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.~~

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

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

1. ~~any ambient air quality standard in any air quality control region; or~~

2. ~~any applicable maximum allowable increase over the baseline concentration in any area. This baseline concentration for any stationary source or modification with respect to any maximum allowable increase for particulate matter (PM_{10}) shall be based on the maximum allowable increases for TSP as in effect on the date the application was submitted, if the owner or operator of the source or modification submitted an application for a permit before the PM_{10} maximum allowable increases became effective and the application as submitted before that date was determined complete.~~

L. ~~Air Quality Models. All estimates of ambient concentrations required under this Section shall be based on the applicable and approved air quality models, data bases, and other requirements as specified and approved by the administrative authority prior to submission of the permit application.~~

~~M. Air Quality Analysis~~

~~1. Preapplication Analysis~~

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

~~i. for the source, each pollutant that it would have the potential to emit in a significant amount;~~

~~ii. 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 ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the administrative authority 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 year and shall represent at least the year preceding receipt of the application, except that if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.~~

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

~~3. Operation of Monitoring Station. For purposes of satisfying LAC 33:III.509.M, the installation and operation of monitoring stations shall be conducted in accordance with all applicable federal and state laws and regulation. Quality assurance plans for such operations must be approved by the administrative authority prior to the plan's implementation.~~

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

~~1. With respect to a source or modification to which LAC 33:III.509.J, L or P apply, such information shall include:~~

~~a. a description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;~~

~~b. a detailed schedule for construction of the source or modification;~~
and

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

~~2. Upon request of the administrative authority, the owner or operator shall also provide information on:~~

~~a. the air quality impact of the source or 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 August 7, 1977, in the area the source or modification would affect.~~

~~O. Additional Impact Analyses~~

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

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

~~3. Where the air quality impact analysis required under this Section indicates that the issuance of a permit for any major stationary source or major modification would result in the consumption of more than 50 percent of any available annual increment or 80 percent of any available short term increment, the applicant may be required by the administrative authority to submit to the Office of Environmental Services, Permits Division a report covering the following factors:~~

~~a. the effects the proposed consumption would have upon the industrial and economic development within the impact area of the proposed source; and~~

~~b. any alternatives to the increment consumption such as alternate siting of the proposed source or parts thereof or additional abatement of emissions.~~

~~4. The report required pursuant to LAC 33:III.509.O.3 may be required in instances where the proposed major stationary source or major modification would result in an increment consumption less than that specified in said Paragraph if the administrative authority finds that unusual circumstances exist in the area of the proposed major stationary source or major modification which warrant such a report. In such instances, the administrative authority shall notify the applicant in writing when such a report is required.~~

~~5. Visibility Monitoring. The administrative authority may require monitoring of visibility in any federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the administrative authority deems necessary and appropriate.~~

~~P. Source Impacting Federal Class I Areas—Additional Requirements~~

~~1. Notice to Federal Land Managers. The administrative authority shall provide written notice of any permit application for a proposed major stationary source or major modification the emissions from which may affect a Class I area to the federal land manager, and the federal official charged with direct responsibility for management of any lands within any such area. The administrative authority shall provide such notice promptly after receiving the application. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on the visibility in the federal Class I area. The~~

administrative authority shall also provide the federal land manager and such federal officials with a copy of the preliminary determination report required under LAC 33:III.509.Q and shall make available to them any materials used in making that determination, promptly after the administrative authority makes such determination. Finally, the administrative authority shall also notify all affected federal land managers within 30 days of receipt of any advanced notifications of any such permit application.

2. ~~Denial Impact on Air Quality Related Values.~~ The federal land manager of any such lands may demonstrate to the administrative authority that the emissions from a proposed source or modification would have an adverse impact on the air quality related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the administrative authority concurs with such demonstration, then the permit shall not be issued.

3. ~~Visibility Analysis.~~ The administrative authority shall consider any analysis performed by the federal land manager provided within 30 days of the notification and analysis required under LAC 33:III.509.P.1 that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal Class I area. Where the administrative authority finds that such an analysis does not demonstrate to the satisfaction of the administrative authority that an adverse impact on visibility will result in the federal Class I area, the administrative authority must, in the notice of public hearing on the permit application, either explain such decision or give notice as to where the explanation can be obtained.

4. ~~Class I Variances.~~ The owner or operator of a proposed source or modification may demonstrate to the federal land manager and the administrative authority that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the administrative authority may, provided the applicable requirements of this Section are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter and nitrogen dioxide would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

	Maximum Allowable Increase (Micrograms per cubic meter)
Particulate Matter:	
PM ₁₀ Annual arithmetic mean	-17 -30
PM ₁₀ 24-hr maximum	
Sulfur dioxide:	
Annual arithmetic mean	-20
24-hr maximum	-91
3-hr maximum	325

Nitrogen dioxide: Annual arithmetic mean	25
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~~Q. — Public Participation~~

~~1. — The administrative authority shall notify the applicant within 60 days after receipt of the application as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the administrative authority received all required information.~~

~~2. — Within one year after receipt of a complete application, the administrative authority shall:~~

~~a. — make a preliminary determination whether construction should be approved, approved with conditions, or disapproved; and~~

~~b. — make available in at least one 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.~~

~~3. — Within 30 days after the administrative authority has made the preliminary determination, the administrative authority shall cause a public notice to be published once in the official journal of the state and once in a local newspaper or journal of general circulation in the region in which the proposed source would be constructed.~~

~~a. — The contents of the public notice shall be as follows:~~

~~i. — the name and address of the applicant;~~

~~ii. — the nature and location of the proposed source or modification;~~

~~iii. — the preliminary determination of the administrative authority;~~

~~iv. — the degree of increment consumption that is expected from the source or modification;~~

~~v. — the opportunity to request a public hearing concerning the application;~~

~~vi. — the opportunity and time periods to submit written public comments concerning the application; and~~

~~vii. — the name and address of the person to whom public comments and requests for public hearings should be sent.~~

~~4. — A period of 30 days after the date of publication will be allowed for public comment. In those instances where the proposed major stationary source or major modification may effect the air quality of a neighboring state, the comment period for that state shall be 60 days from the date of publication.~~

~~5. — The administrative authority may, upon request of any interested person made during the comment period, hold a public hearing at which persons may appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and any other appropriate consideration.~~

~~6. — The administrative authority shall consider all written comments submitted within the comment period and all written or oral comments presented at any public hearing, if any, before making a final determination of the permit application.~~

~~7. — The administrative authority shall make all comments available for public inspection at the Headquarters of the Department of Environmental Quality. In accordance with 40~~

~~CFR 51.166 (g)(2)(ii-vii), the regional office having jurisdiction for the parish in which the permit or permit modification is being sought will be the regional location of all materials. In addition, the administrative authority may elect to provide certain parts of permits or permit modifications at other locations in the region.~~

~~8. Within one year after receipt of a complete application, the administrative authority shall:~~

~~a. make a final determination whether construction shall be approved, approved with conditions, or disapproved; and~~

~~b. notify the applicant in writing of the final determination and make such notification available for public inspection at the Headquarters of the Department of Environmental Quality. In accordance with 40 CFR 51.166(g)(2)(ii-vii), the regional office having jurisdiction for the parish in which the permit or permit modification is being sought will be the regional location of all materials. In addition, the administrative authority may elect to provide certain parts of permits or permit modifications at other locations in the region.~~

~~R. Source Obligation~~

~~1. Any owner or operator who constructs or operates a source or modification not in accordance with the terms of any permit issued under this Section, or any owner or operator of a source or modification subject to this Section who commences construction after the effective date of these regulations without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action.~~

~~2. A permit shall become invalid if construction is not commenced within 18 months after issuance of such permit, or if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The administrative authority may extend the 18 month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.~~

~~3. The issuance of a permit hereunder shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Louisiana State Implementation Plan and any other requirements under local, state, or federal law.~~

~~4. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of LAC 33:III.509.J R shall apply to the source or modification as though construction had not yet commenced on the source or modification.~~

~~S. Innovative Control Technology~~

~~1. The owner or operator of a proposed major stationary source or major modification may request the administrative authority in writing, to approve and permit a system of innovative control technology.~~

~~2. The administrative authority may, with the consent of the governor(s) of other affected state(s), determine that the employment of a system of innovative control technology is permissible, 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 LAC 33:III.509.J.2 by a date specified by the administrative authority. Such date shall not be later than four years from the time of start up or seven years from permit issuance;~~

~~c. — the source or modification would meet the requirements equivalent to those in LAC 33:III.509.J and K based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the administrative authority;~~

~~d. — the source or modification would not before the date specified by the administrative authority:~~

~~i. — cause or contribute to a violation of an applicable ambient air quality standard; or~~

~~ii. — impact any Class I area; or~~

~~iii. — 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.~~

~~3. — The administrative authority shall withdraw any approval to employ a system of innovative control technology made under this Section, if:~~

~~a. — the proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or~~

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

~~4. — If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with LAC 33:III.509.S.3, the administrative authority may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.~~

A. Applicability Procedures

1. The requirements of this Section apply to the construction of any new major stationary source, as defined in Subsection B of this Section, or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Sections 107(d)(1)(A)(ii) or (iii) of the Clean Air Act.

2. The requirements of Subsections J-R of this Section apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this Section otherwise provides.

3. No new major stationary source or major modification to which the requirements of Subsection J-Paragraph R.5 of this Section apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. The administrative authority has authority to issue any such permit.

4. The requirements of the program will be applied in accordance with the following principles.

a. Except as otherwise provided in Paragraphs A.5 and 6 of this Section, and consistent with the definition of major modification contained in Subsection B of this

Section, a project is a major modification for a regulated new source review (NSR) pollutant if it causes two types of emissions increases—a *significant* emissions increase, as defined in Subsection B of this Section, and a significant *net emissions increase*, as defined in Subsection B of this Section. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

b. The procedure for calculating, before beginning actual construction, whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Subparagraphs A.4.c-f of this Section. The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is as defined in Subsection B. *Net Emissions Increase* of this Section. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

c. Actual-to-Projected-Actual Applicability Test for Projects That Only Involve Existing Emissions Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the *projected actual emissions*, as defined in Subsection B of this Section, and the *baseline actual emissions*, as defined in Subparagraphs B. *Baseline Actual Emissions*.a and b of this Section, for each existing emissions unit, equals or exceeds the *significant* amount for that pollutant, as defined in Subsection B of this Section.

d. Actual-to-Potential Test for Projects That Only Involve Construction of a New Emissions Unit. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the *potential to emit*, as defined in Subsection B of this Section, from each new emissions unit following completion of the project and the *baseline actual emissions*, as defined in Subparagraph B. *Baseline Actual Emissions*.c of this Section, of these units before the project equals or exceeds the *significant* amount for that pollutant, as defined in Subsection B of this Section.

e. Emissions Test for Projects That Involve Clean Units. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

f. Hybrid Test for Projects That Involve Multiple Types of Emissions Units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Subparagraphs A.4.c-e of this Section as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the *significant* amount for that pollutant, as defined in Subsection B of this Section. For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in Subparagraph A.4.c of this Section for the existing unit and using the method specified in Subparagraph A.4.e of this Section for the Clean Unit.

5. For any major stationary source for a plantwide applicability limit (PAL) for a regulated NSR pollutant, the major stationary source shall comply with the requirements under Subsection AA of this Section.

6. An owner or operator undertaking a *pollution control project (PCP)*, as defined in Subsection B of this Section, shall comply with the requirements under Subsection Z of this Section.

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

Actual Emissions—the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under Subsection AA of this Section. Instead, Subsection B. *Projected Actual Emissions* and *Baseline Actual Emissions* of this Section shall apply for those purposes.

a. In general, *actual emissions* as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive

24-month period that precedes the particular date and which is representative of normal source operation. The administrative authority 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.

b. The administrative authority may presume that source-specific allowable emissions for the unit are equivalent to the *actual emissions* of the unit.

c. 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.

Adverse Impact on Visibility—visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairments, and how these factors correlate with:

a. times of visitor use of the federal Class I area; and

b. the frequency and timing of natural conditions that reduce visibility.

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

a. the applicable standards as set forth in 40 CFR Parts 60 and 61; or

b. the applicable implementation plan emissions limitation, including those with a future compliance date; or

c. the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

Baseline Actual Emissions—the rate of emissions, in tons per year, of a regulated NSR pollutant, determined as follows.

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

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

i. The average rate shall include fugitive emissions to the extent quantifiable, and AUTHORIZED emissions associated with startups; AND shutdowns; AND MALFUNCTIONS.

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

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

iv. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clause a.ii of this definition.

b. For an existing emissions unit, other than an electric utility steam generating unit, *baseline actual emissions* means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is

received by the administrative authority for a permit required under this Section, except that the 10-year period shall not include any period earlier than November 15, 1990.

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

i. The average rate shall include fugitive emissions to the extent quantifiable, and AUTHORIZED emissions associated with startups; AND shutdowns; AND MALFUNCTIONS.

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

iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrative authority proposed or promulgated under 40 CFR Part 63, the *baseline actual emissions* need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

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

v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Clauses b.ii and iii of this definition.

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

d. For a PAL for a stationary source, the *baseline actual emissions* shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Subparagraph a of this definition, for other existing emissions units in accordance with the procedures contained in Subparagraph b of this definition, and for a new emissions unit in accordance with the procedures contained in Subparagraph c of this definition.

Baseline Area—

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

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

i. establishes a minor source baseline date; or
ii. is subject to 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166 and would be constructed in the same state as the state proposing the redesignation.

c. 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 PM_{10} increments, except that such *baseline area* shall not remain in effect if the administrative authority rescinds the corresponding minor source baseline date in accordance with Subparagraph B.Baseline Date.d of this Section.

Baseline Concentration—

a. 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:

i. the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in Subparagraph b of this definition;
 ii. 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.

b. The following will not be included in the *baseline concentration* and will affect the applicable maximum allowable increase:

i. actual emissions from any major stationary source on which construction commenced after the major source baseline date; and
 ii. actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

Baseline Date—

a. *Major Source Baseline Date—*

i. in the case of particulate matter (PM₁₀) and sulfur dioxide, January 6, 1975; and
 ii. in the case of nitrogen dioxide, February 8, 1988.

b. *Minor Source Baseline Date—*the earliest date after the trigger date on which a major stationary source or a major modification subject to this Section submits a complete application under the relevant regulations. The trigger date is:

i. in the case of particulate matter (PM₁₀) and sulfur dioxide, August 7, 1977; and
 ii. in the case of nitrogen dioxide, February 8, 1988.

c. The *baseline date* is established for each pollutant for which increments or other equivalent measures have been established if:

i. the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166; and

ii. 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.

d. 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 administrative authority shall rescind a *minor source baseline date* where it can be shown, to the satisfaction of the administrative authority, 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.

*Begin Actual Construction—*in general, initiation of physical on-site construction activities on an emissions unit that 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 operation, this term refers to those on-site activities, other than preparatory activities, that mark the initiation of the change.

Best Available Control Technology(BACT)—

a. An emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each pollutant subject to regulation under this Section that would be emitted from any proposed major stationary source or major modification that the administrative authority, 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.

b. In no event shall application of *best available control technology* result in emissions of any pollutant that would exceed the emissions allowed by an applicable standard under 40 CFR Parts 60 and 61. If the administrative authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of *best available control technology*. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means that achieve equivalent results.

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

Clean Air Act—the federal Clean Air Act, as amended (42 U.S.C. Chapter 85).

Clean Coal Technology—any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that 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.

Clean Coal Technology—ANY TECHNOLOGY, INCLUDING TECHNOLOGIES APPLIED AT THE PRECOMBUSTION, COMBUSTION, OR POST COMBUSTION STAGE, AT A NEW OR EXISTING FACILITY THAT 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. REPEALED FROM AQ246F.

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

Clean Coal Technology Demonstration Project—A PROJECT USING FUNDS APPROPRIATED UNDER THE HEADING “DEPARTMENT OF ENERGY CLEAN COAL TECHNOLOGY,” UP TO A TOTAL AMOUNT OF \$2,500,000,000 FOR COMMERCIAL DEMONSTRATION OF CLEAN COAL TECHNOLOGY, OR SIMILAR PROJECTS FUNDED THROUGH APPROPRIATIONS FOR THE ENVIRONMENTAL PROTECTION AGENCY. THE FEDERAL CONTRIBUTION FOR A QUALIFYING PROJECT SHALL BE AT LEAST 20 PERCENT OF THE TOTAL COST OF THE DEMONSTRATION PROJECT. REPEALED FROM AQ246F.

Clean Unit—any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit in accordance with regulations approved by the administrative authority in accordance with Subsection X of this Section; or any emissions unit that has been designated by an administrative authority as a Clean Unit, based on the criteria in Subparagraphs Y.3.a-d of this Section, using a plan-approved permitting process; or any emissions unit that has

been designated as a Clean Unit by the administrative authority in accordance with Subparagraphs Y.3.a-d of this Section.

Commence—as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

a. begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

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

Complete—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 administrative authority from requesting or accepting any additional information.

Construction—any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in actual emissions.

Continuous Emissions Monitoring System (CEMS)—all of the equipment that may be required to meet the data acquisition and availability requirements of this Section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Continuous Emissions Rate Monitoring System (CERMS)—the total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

Continuous Parameter Monitoring System (CPMS)—all of the equipment necessary to meet the data acquisition and availability requirements of this Section, to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter values on a continuous basis.

Electric Utility Steam Generating Unit—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.

Emissions Unit—any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant, and includes an *electric utility steam generating unit*, as defined in this Subsection. For purposes of this Section, there are two types of *emissions units*:

a. A *new emissions unit* is any emissions unit that is, or will be, newly constructed and that has existed for less than two years from the date such emissions unit first operated.

b. An *existing emissions unit* is any emissions unit that is not a new emissions unit. A *replacement unit*, as defined in this Subsection, is an *existing emissions unit*.

Federal Land Manager—with respect to any lands in the United States, the secretary of the department with authority over such lands.

Federally Enforceable—all limitations and conditions that are enforceable by the administrative authority, including those requirements developed in accordance with 40 CFR Parts 60, 61, and 63, requirements within any applicable State Implementation Plan, any permit requirements established in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

Fugitive Emissions—those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

High Terrain—any area having an elevation 900 feet or more above the base of the stack of a source.

Indian Governing Body—the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Indian Reservation—any federally-recognized reservation established by treaty, agreement, executive order, or act of Congress.

Innovative Control Technology—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.

Low Terrain—any area other than *high terrain*, as defined in this Subsection.

Lowest Achievable Emission Rate (LAER)—as defined in LAC 33:III.504.

Major Modification—

a. 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.

b. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include:

i. routine maintenance, repair, and replacement;

ii. use of an alternative fuel or raw material by reason of any 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 in accordance with the Federal Power Act;

iii. use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act;

iv. use of an alternate fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

v. use by a source of an alternate fuel or raw material that:

(a) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition that was established after January 6, 1975, in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166; or

(b) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166;

vi. an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition that was established after January 6, 1975, in accordance with 40 CFR 52.21 or under regulations approved in accordance with 40 CFR Part 51, Subpart I or 40 CFR 51.166;

vii. any change in source ownership;

viii. the addition, replacement, or use of a *pollution control project*, as defined in this Subsection, at an existing emissions unit meeting the requirements of Subsection Z of this Section. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion;

viii. the addition, replacement, or use of a *pollution control project*, as defined in this Subsection, at an existing emissions unit meeting the requirements of Subsection Z of this Section. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.

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

(a). the State Implementation Plan for the state in which the project is located; and

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

~~IX. THE INSTALLATION, OPERATION, CESSATION, OR REMOVAL OF A TEMPORARY CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT, PROVIDED THAT THE PROJECT COMPLIES WITH:~~

~~(A). THE STATE IMPLEMENTATION PLAN FOR THE STATE IN WHICH THE PROJECT IS LOCATED; AND~~

~~(B). OTHER REQUIREMENTS NECESSARY TO ATTAIN AND MAINTAIN THE NATIONAL AMBIENT AIR QUALITY STANDARDS DURING THE PROJECT AND AFTER IT IS TERMINATED;~~

x. 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;

~~X. 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;~~

xi. the reactivation of a very clean coal-fired electric utility steam generating unit.

~~XI. THE REACTIVATION OF A VERY CLEAN COAL-FIRED ELECTRIC UTILITY STEAM GENERATING UNIT.~~

d. This definition shall not apply with respect to a particular pollutant subject to regulation under this Section when the major stationary source is complying with the requirements under Subsection AA of this Section for a PAL for that pollutant. Instead, the definition at Subparagraph AA.2.g of this Section shall apply.

Major Stationary Source—

a. any of the stationary sources of air pollutants listed in Table A of this definition that emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under this Section;

b. for stationary source categories other than those listed in Table A of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under this Section; or

c. any physical change that would occur at a source not otherwise qualifying as a major stationary source under Subparagraphs a and b of this definition if the change would constitute a major source by itself;

d. a major source that is major for volatile organic compounds shall be considered major for ozone;

e. the fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Section whether it is a *major stationary source*, unless the source is listed in Table A of this definition or, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act.

Table A – Stationary Sources of Air Pollutants	
1	Fossil fuel-fired steam electric plants of more than 250 million British thermal units (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 mill plants
7	Primary aluminum ore reduction plants
8	Primary copper smelters
9	Municipal incinerators capable of charging more than 250 tons of refuse per day
10	Hydrofluoric, sulfuric, and 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 combinations 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

Necessary Preconstruction Approvals or Permits—those permits or approvals required under all applicable air quality control laws and regulations.

Net Emissions Increase—

a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

i. the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated in accordance with Paragraph A.4 of this Section; and

ii. any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this Clause shall be determined as provided in Subsection B. *Baseline Actual Emissions* of this Section, except that Clauses B. *Baseline Actual Emissions*.a.iii and b.iv of this Section shall not apply.

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

i. the date five years before construction on the particular change commences; and

ii. the date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

i. the administrative authority or other administrative authority has not relied on it in issuing a permit for the source under this Section, which permit is in effect when the increase in actual emissions from the particular change occurs; and

ii. the increase or decrease in emissions did not occur at a Clean Unit except as provided in Paragraphs X.8 and Y.10 of this Section.

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

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

f. A decrease in actual emissions is creditable only to the extent that:

i. the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

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

iii. it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

iv. the decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under Subsection Y of this Section or under regulations approved in accordance with 40 CFR 51.165(d) or to 40 CFR 51.166(u). That is, once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the designation is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emission reductions that were not relied upon in a PCP excluded in accordance with Subsection Z of this Section or for a Clean Unit designation are creditable to the extent they meet the requirements in Subparagraph Z.6.d of this Section for the PCP and Paragraphs X.8 and Y.10 of this Section for a Clean Unit.

g. Reserved.

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

i. Subparagraph B. *Actual Emissions*.a of this Section shall not apply for determining creditable increases and decreases.

Pollution Control Project (PCP)—at an existing emissions unit, any activity, set of work practices, or project, including *pollution prevention* as defined in this Subsection, undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in Subparagraphs a-d of this definition are presumed to be environmentally beneficial in accordance with Subparagraph Z.2.a of this Section. Projects not listed in this definition may qualify for a case-specific PCP exclusion in accordance with the requirements of Paragraphs Z.2 and 5 of this Section. Projects presumed to be environmentally beneficial include:

a. conventional or advanced flue gas desulfurization or sorbent injection for control of SO₂;

b. electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;

c. flue gas recirculation, low-NO_x burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x;

d. regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this Section, *hydrocarbon combustion flare* means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control

emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide;

e. activities or projects undertaken to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following fuel switches:

i. switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel to CA 0.05 percent sulfur #2 diesel);

ii. switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

iii. switching from coal to wood, excluding construction or demolition waste, chemical- or pesticide-treated wood, and other forms of "unclean" wood;

iv. switching from coal to #2 fuel oil (0.5 percent maximum sulfur content); and

v. switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content);

f. activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:

i. the productive capacity of the equipment is not increased as a result of the activity or project;

ii. the projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedures apply:

(a). determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B;

(b). calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS;

(c). calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP;

(d). if the value calculated in Subclause f.ii.(b) of this definition is more than the value calculated in Subclause f.ii.(c) of this definition, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

Pollution Prevention—any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants, including fugitive emissions, and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

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

Predictive Emissions Monitoring System (PEMS)—all of the equipment necessary to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

Prevention of Significant Deterioration (PSD) Program—a major source preconstruction permit program that has been approved by the administrator and incorporated into the State Implementation Plan to implement the requirements of this Section or the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

Project—a physical change in, or change in the method of operation of, an existing major stationary source.

Projected Actual Emissions—the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated 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. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

Projected Actual Emissions —the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated 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. 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 state or federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

b. shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

b. shall include fugitive emissions to the extent quantifiable, and AUTHORIZED emissions associated with startups, AND shutdowns, AND MALFUNCTIONS; and

c. shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions as defined in this Subsection and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

d. in lieu of using the method set out in Subparagraphs a-c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined in this Subsection.

Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit—any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation, where the unit:

a. has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the administrative authority's emissions inventory at the time of enactment;

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

c. is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation; and

d. is otherwise in compliance with the requirements of the Clean Air Act.

Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit—ANY PHYSICAL CHANGE OR CHANGE IN THE METHOD OF OPERATION ASSOCIATED WITH THE COMMENCEMENT OF

~~COMMERCIAL OPERATIONS BY A COAL-FIRED UTILITY UNIT AFTER A PERIOD OF DISCONTINUED OPERATION, WHERE THE UNIT:~~

~~A. HAS NOT BEEN IN OPERATION FOR THE TWO-YEAR PERIOD PRIOR TO THE ENACTMENT OF THE CLEAN AIR ACT AMENDMENTS OF 1990, AND THE EMISSIONS FROM SUCH UNIT CONTINUE TO BE CARRIED IN THE ADMINISTRATIVE AUTHORITY'S EMISSIONS INVENTORY AT THE TIME OF ENACTMENT;~~

~~B. WAS EQUIPPED PRIOR TO SHUT-DOWN WITH A CONTINUOUS SYSTEM OF EMISSIONS CONTROL THAT ACHIEVES A REMOVAL EFFICIENCY FOR SULFUR DIOXIDE OF NO LESS THAN 85 PERCENT AND A REMOVAL EFFICIENCY FOR PARTICULATES OF NO LESS THAN 98 PERCENT;~~

~~C. IS EQUIPPED WITH LOW-NO_x BURNERS PRIOR TO THE TIME OF COMMENCEMENT OF OPERATIONS FOLLOWING REACTIVATION; AND~~

~~D. IS OTHERWISE IN COMPLIANCE WITH THE REQUIREMENTS OF THE CLEAN AIR ACT. REPEALED FROM AQ246F.~~

Reasonably Available Control Technology (RACT)—devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

a. the necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

b. the social, environmental, and economic impact of such controls; and

c. alternative means of providing for attainment and maintenance of such standard.

Regulated NSR Pollutant—

a. any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrative authority (e.g., volatile organic compounds are precursors for ozone);

b. any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

c. any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act; or

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

Replacement Unit—an emissions unit for which all the criteria listed in Subparagraphs a-d of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. 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.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not alter the basic design parameters of the process unit.

d. 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.

Repowering—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 administrative authority, 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.

a. Repowering shall also include any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

b. The administrative authority shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under Section 409 of the Clean Air Act.

~~Repowering—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 ADMINISTRATIVE AUTHORITY, 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.~~

~~A.—REPOWERING SHALL ALSO INCLUDE ANY OIL AND/OR GAS FIRED UNIT THAT HAS BEEN AWARDED CLEAN COAL TECHNOLOGY DEMONSTRATION FUNDING AS OF JANUARY 1, 1991, BY THE DEPARTMENT OF ENERGY.~~

~~B.—THE ADMINISTRATIVE AUTHORITY SHALL GIVE EXPEDITED CONSIDERATION TO PERMIT APPLICATIONS FOR ANY SOURCE THAT SATISFIES THE REQUIREMENTS OF THIS DEFINITION AND IS GRANTED AN EXTENSION UNDER SECTION 409 OF THE CLEAN AIR ACT:REPEALED FROM AQ246F.~~

Reviewing Authority—the state air pollution control agency, local agency, other state agency, Indian tribe, or other agency authorized by the administrative authority to carry out a permit program under 40 CFR 51.165 and 40 CFR 51.166, or the administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

Secondary Emissions—emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this definition, secondary emissions must be specific, well defined, and quantifiable, and impact the same general areas as the stationary source modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that 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 that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Significant—

a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM ₁₀ emissions

Pollutant	Emission Rate
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics ¹	0.0000035 tpy
Municipal waste combustor metals ²	15 tpy
Municipal waste combustor acid gases ³	40 tpy
Municipal solid waste landfills emissions ⁴	50 tpy

¹Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

²Measured as particulate matter.

³Measured as sulfur dioxide and hydrogen chloride.

⁴Measured as nonmethane organic compounds.

b. in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that Subparagraph a of this definition does not list, any emissions rate;

c. notwithstanding Subparagraph a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a Class I area and have an impact on such area equal to or greater than 1µg/m³ (24-hour average).

Significant Emissions Increase—for a regulated NSR pollutant, an increase in emissions that is *significant*, as defined in this Subsection, for that pollutant.

Stationary Source—any building, structure, facility, or installation that emits or may emit any pollutant subject to regulation under this Section.

Temporary Clean Coal Technology Demonstration Project—a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the State Implementation Plans for the state in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

~~Temporary Clean Coal Technology Demonstration Project—A CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT THAT IS OPERATED FOR A PERIOD OF FIVE YEARS OR LESS, AND THAT COMPLIES WITH THE STATE IMPLEMENTATION PLAN FOR THE STATE IN WHICH THE PROJECT IS LOCATED AND OTHER REQUIREMENTS NECESSARY TO ATTAIN AND MAINTAIN THE NATIONAL AMBIENT AIR QUALITY STANDARDS DURING THE PROJECT AND AFTER IT IS TERMINATED. REPEALED FROM AQ246F.~~

C. Ambient Air Increments. In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following.

Pollutant	Maximum Allowable Increase (Micrograms per Cubic Meter) ¹
<u>Class I</u>	
<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>
<u>Class II</u>	
<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>
<u>Class III</u>	
<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>

¹For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

D. Ambient Air Ceilings. No concentration of a pollutant shall exceed:

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

E. Restrictions on Area Classifications

1. All of the following areas that were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:
 - a. international parks;
 - b. national wilderness areas that exceed 5,000 acres in size;
 - c. national memorial parks that exceed 5,000 acres in size; and
 - d. national parks that exceed 6,000 acres in size.
2. Areas that were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Section.

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

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

a. an area that 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, or a national lakeshore or seashore; and

b. a national park or national wilderness area established after August 7, 1977, that exceeds 10,000 acres in size.

F. Reserved.

G. Redesignation

1. All areas, except as otherwise provided under Subsection E of this Section, are designated Class II as of December 5, 1974. Redesignation, except as otherwise precluded by Subsection E of this Section, may be proposed by the respective states or Indian governing bodies, as provided below, subject to approval by the administrative authority as a revision to the applicable State Implementation Plan.

2. The state may submit to the administrator a proposal to redesignate areas of the state Class I or Class II, provided that:

a. at least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

b. other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

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

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

e. the state has proposed the redesignation after consultation with the elected leadership of local and other substate general purpose governments in the area covered by the proposed redesignation.

3. Any area other than an area to which Subsection E of this Section refers may be redesignated as Class III if:

a. the redesignation would meet the requirements of Paragraph G.2 of this Section;

b. the redesignation, except any established by an Indian governing body, has been specifically approved by the governor of the state, after consultation with the appropriate committees of the legislature, if it is in session, or with the leadership of the legislature,

if it is not in session (unless state law provides that the redesignation must be specifically approved by state legislation) and if general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation or pass resolutions concurring in the redesignation;

c. 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

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

4. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body. The appropriate Indian governing body may submit to the administrative authority a proposal to redesignate areas Class I, Class II, or Class III, provided that:

a. the Indian governing body has followed procedures equivalent to those required of a state under Paragraph G.2 and Subparagraphs G.3.c and d of this Section; and

b. such redesignation is proposed after consultation with the states in which the Indian reservation is located and which border the Indian reservation.

H. Stack Heights

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

a. so much of the stack height of any source as exceeds good engineering practice; or

b. any other dispersion technique.

2. Paragraph H.1 of this Section shall not apply with respect to stack heights in existence before December 31, 1970, or to dispersion techniques implemented before then.

I. Exemptions

1. The requirements of Subsections J-R of this Section shall not apply to a particular major stationary source or major modification if:

a. the major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or

b. the source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, were considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any following categories:

i. coal cleaning plants (with thermal dryers);

ii. kraft pulp mills;

iii. portland cement plants;

iv. primary zinc smelters;

v. iron and steel mills;

vi. primary aluminum ore reduction plants;

vii. primary copper smelters;

viii. municipal incinerators capable of charging more than 250

tons of refuse per day;

- ix. hydrofluoric, sulfuric, or nitric acid plants;
 - x. petroleum refineries;
 - xi. lime plants;
 - xii. phosphate rock processing plants;
 - xiii. coke oven batteries;
 - xiv. sulfur recovery plants;
 - xv. carbon black plants (furnace process);
 - xvi. primary lead smelters;
 - xvii. fuel conversion plants;
 - xviii. sintering plants;
 - xix. secondary metal production plants;
 - xx. chemical process plants;
 - xxi. fossil fuel boilers (or combination thereof) totaling more than 250 million british thermal units per hour heat input;
 - xxii. petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - xxiii. taconite ore processing plants;
 - xxiv. glass fiber processing plants;
 - xxv. charcoal production plants;
 - xxvi. fossil fuel-fired steam electric plants of more than 250 million british thermal units per hour heat input;
 - xxvii. any other stationary source category that, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act; or
- c. the source or modification is a portable stationary source that has previously received a permit under requirements equivalent to those contained in Subsections J-R of this Section, if:
- i. the source proposes to relocate and emissions of the source at the new location would be temporary; and
 - ii. the emissions from the source would not exceed its allowable emissions; and
 - iii. the emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and
 - iv. reasonable notice is given to the administrative authority 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 administrative authority not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the administrative authority.
2. The requirements of Subsections J-R of this Section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Clean Air Act.
3. The requirements of Subsections K, M, and O of this Section shall not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

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

5. The administrative authority may exempt a stationary source or modification from the requirements of Subsection M of this Section, with respect to monitoring for a particular pollutant, if:

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

<u>Carbon monoxide</u>	<u>575 $\mu\text{g}/\text{m}^3$</u>	<u>8-hour average</u>
<u>Nitrogen dioxide</u>	<u>14 $\mu\text{g}/\text{m}^3$</u>	<u>annual average</u>
<u>Particulate matter</u>	<u>10 $\mu\text{g}/\text{m}^3$ of PM_{10}</u>	<u>24-hour average</u>
<u>Sulfur dioxide</u>	<u>13 $\mu\text{g}/\text{m}^3$</u>	<u>24-hour average</u>
<u>Ozone</u>	<u>No <i>de minimis</i> air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.</u>	
<u>Lead</u>	<u>0.1 $\mu\text{g}/\text{m}^3$</u>	<u>3-month average</u>
<u>Fluorides</u>	<u>0.25 $\mu\text{g}/\text{m}^3$</u>	<u>24-hour average</u>
<u>Total reduced sulfur</u>	<u>10 $\mu\text{g}/\text{m}^3$</u>	<u>1-hour average</u>
<u>Hydrogen sulfide</u>	<u>0.2 $\mu\text{g}/\text{m}^3$</u>	<u>1-hour average</u>
<u>Reduced sulfur compounds</u>	<u>10 $\mu\text{g}/\text{m}^3$</u>	<u>1-hour average</u>

b. the concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Subparagraph I.5.a of this Section; or

c. the pollutant is not listed in Subparagraph I.5.a of this Section.

6. Reserved.

7. Reserved.

8. The permitting requirements of Paragraph K.2 of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted an application for a permit under this Section before the provisions embodying the maximum allowable increase took effect as part of the applicable State Implementation Plan and the permitting authority subsequently determined that the application as submitted before that date was complete.

9. The permitting requirements of Paragraph K.2 of this Section shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM_{10} if:

a. the owner or operator of the source or modification submitted an application for a permit under this Section before the provisions embodying the maximum allowable increases for PM_{10} took effect in a State Implementation Plan to which this Section applies; and

b. the permitting authority subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements equivalent to Paragraph K.2 of this Section shall apply with respect to the maximum allowable increases for TSP as in effect on the date the application was submitted.

J. Control Technology Review

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

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

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

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

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

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

in any area.

L. Air Quality Models

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

2. Where an air quality model specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the administrative authority 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 Subsection Q of this Section.

M. Air Quality Analysis

1. Preapplication Analysis

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

i. for the source, each pollutant that it would have the potential to emit in a significant amount;

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

e. For any application that became complete, except as to the requirements of Subparagraphs M.1.c and d of this Section, between June 8, 1981 and February 9, 1982, the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least the period from February 9, 1981, to the date the application became otherwise complete, except:

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

ii. if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than four months), the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least that shorter period;

iii. if the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the administrative authority may waive the otherwise-applicable requirements of this Subsection to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

f. The owner or operator of a proposed stationary source or modification 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 Paragraph M.1 of this Section.

g. For any application that became complete, except as to the requirements of Subparagraphs M.1.c and d of this Section pertaining to PM₁₀, after December 1, 1988 and no later than August 1, 1989, the data that Subparagraph M.1.c of this Section requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the administrative authority determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that Subparagraph M.1.c of this Section requires shall have been gathered over that shorter period.

h. With respect to any requirements for air quality monitoring of PM₁₀ under Subparagraphs I.9.a and b of this Section, the owner or operator of the source or modification shall use a monitoring method approved by the administrative authority 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 administrative authority.

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

3. Operations of Monitoring Stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this Subsection.

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

1. With respect to a source or modification to which Subsections J, L, N, and P of this Section apply, such information shall include:

a. a description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

b. a detailed schedule for construction of the source or modification;

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

2. Upon request of the administrative authority, the owner or operator shall also provide information on:

a. the air quality impact of the source or 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 that has occurred since August 7, 1977, in the area the source or modification would affect.

O. Additional Impact Analyses

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

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

3. Visibility Monitoring. The administrative authority may require monitoring of visibility in any federal Class I area near the proposed new stationary source for major modification for such purposes and by such means as the administrative authority deems necessary and appropriate.

P. Sources Impacting Federal Class I Areas—Additional Requirements

1. Notice to Federal Land Managers. The administrative authority shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the federal land manager and

the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal Class I area. The administrative authority shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under Subsection Q of this Section, and shall make available to them any materials used in making that determination, promptly after the administrative authority makes such determination. Finally, the administrative authority shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

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

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

4. Denial—Impact on Air Quality-Related Values. The federal land manager of any such lands may demonstrate to the administrative authority that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values, including visibility, of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the administrative authority concurs with such demonstration, then he shall not issue the permit.

5. Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality-related values of any such lands, including visibility, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the administrative authority, provided that the applicable requirements of this Section are otherwise met, may issue the permit with such emission limitations as may be necessary to ensure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

<u>Pollutant</u>	<u>Maximum Allowable Increase (Micrograms per Cubic Meter)</u>
<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>Pollutant</u>	<u>Maximum Allowable Increase (Micrograms per Cubic Meter)</u>
<u>Annual arithmetic mean</u>	<u>20</u>
<u>24-hr 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>

6. Sulfur Dioxide Variance by Governor With Federal Land Manager's Concurrence. The owner or operator of a proposed source or modification that cannot be approved under Paragraph P.4 of this Section may demonstrate to the governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 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 Paragraph would not adversely affect the air quality-related values of the area, including visibility. The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the administrative authority may issue a permit to such source or modification in accordance with the requirements of Paragraph P.7 of this Section, provided that the applicable requirements of this Section are otherwise met.

7. Variance by the Governor With the President's Concurrence. In any case where the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the President. The President may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the administrative authority may issue a permit in accordance with the requirements of this Paragraph, provided that the applicable requirements of this Section are otherwise met.

8. Emission Limitations for Presidential or Gubernatorial Variance. In the case of a permit issued in accordance with Paragraph P.5 or 6 of this Section, the source or modification shall comply with such emission limitations as may be necessary to ensure 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 that would exceed the following maximum allowable increases over the baseline concentration and to ensure that such emissions would not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

<u>Maximum Allowable Increase</u> <u>[Micrograms per Cubic Meter]</u>		
<u>Period of Exposure</u>	<u>Terrain areas</u>	
	<u>Low</u>	<u>High</u>
<u>24-hr maximum</u>	<u>36</u>	<u>62</u>
<u>3-hr maximum</u>	<u>130</u>	<u>221</u>

Q. Public Participation

1. The administrative authority shall notify all applicants within 60 days after receipt of the application as to the completeness of the application or any deficiency in the

application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the administrative authority received all required information.

2. Within one year after receipt of a complete application, the administrative authority shall:

a. make a preliminary determination whether construction should be approved, approved with conditions, or disapproved;

b. make available in at least one 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. notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment;

d. send a copy of the notice of public comment to the applicant, the administrator, and officials and agencies having cognizance over the location where the proposed construction would occur, as follows:

i. any other state or local air pollution control agencies;

ii. the chief executives of the city and parish where the source

would be located;

iii. any comprehensive regional land use planning agency; and

iv. any state, federal land manager, or Indian governing body

whose lands may be affected by emissions from the source or modification;

e. provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations;

f. consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing in making a final decision on the approvability of the application. The administrative authority shall make all comments available for public inspection in the same locations where the administrative authority made available preconstruction information relating to the proposed source or modification;

g. make a final determination whether construction should be approved, approved with conditions, or disapproved;

h. notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the administrative authority made available preconstruction information and public comments relating to the source.

R. Source Obligation

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

2. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The administrative

authority may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

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

4. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of Subsections J-S of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

5. Reserved.

6. The provisions of this Paragraph apply to projects at an existing emissions unit at a major stationary source, other than projects at a Clean Unit or at a source with a PAI, in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in Subparagraph B *Projected Actual Emissions* a-c of this Section for calculating projected actual emissions.

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

i. a description of the project;

ii. identification of the emission units whose emissions of a regulated NSR pollutant could be affected by the project; and

iii. a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Subparagraph B *Projected Actual Emissions* c of this Section and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Subparagraph R 6.a of this Section to the administrative authority. Nothing in this Subparagraph shall be construed to require the owner or operator of such unit to obtain any determination from the administrative authority 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 is emitted by any emissions unit identified in Clause R 6.a of this Section, and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of, or potential to emit, that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority within 60 days after the end of each year during which records must be generated under Subparagraph R 6.c of this Section.

setting out the unit's annual emissions during the calendar year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the administrative authority if the annual emissions, in tons per year, from the project identified in Subparagraph R.6.a of this Section exceed the baseline actual emissions, as documented and maintained in accordance with Clause R.6.a.ii of this Section, by a significant amount, as defined in Subsection B. Significant of this Section, for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained in accordance with Clause R.6.a.iii of this Section. Such report shall be submitted to the administrative authority within 60 days after the end of such year. The report shall contain the following:

the name, address, and telephone number of the major stationary source.

the annual emissions as calculated in accordance with Subparagraph R.6.c of this Section; and

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).

7. The owner or operator of the source shall make the information required to be documented and maintained in accordance with Paragraph R.6 of this Section available for review, upon a request for inspection by the administrative authority or the general public in accordance with the requirements contained in 40 CFR 70.4(b)(6)(viii).

8. THE REQUIREMENTS OF SUBSECTIONS J-R OF THIS SECTION SHALL APPLY AS IF CONSTRUCTION HAS NOT YET COMMENCED AT ANY TIME THAT A PROJECT IS DETERMINED TO BE A MAJOR MODIFICATION BASED ON ANY CREDIBLE EVIDENCE, INCLUDING BUT NOT LIMITED TO, EMISSIONS DATA PRODUCED AFTER THE PROJECT IS COMPLETED. IN ANY SUCH CASE, THE OWNER OR OPERATOR MAY BE SUBJECT TO ENFORCEMENT FOR FAILURE TO OBTAIN A PSD PERMIT PRIOR TO BEGINNING ACTUAL CONSTRUCTION.

9. IF AN OWNER OR OPERATOR MATERIALLY FAILS TO COMPLY WITH THE PROVISIONS OF PARAGRAPH R.6 OF THIS SECTION, THEN THE CALENDAR YEAR EMISSIONS ARE PRESUMED TO EQUAL THE SOURCE'S POTENTIAL TO EMIT.

10. REVISIONS TO PROJECTED ACTUAL EMISSIONS. FOR PROJECTS ORIGINALLY EVALUATED IN ACCORDANCE WITH PARAGRAPH A.3 OF THIS SECTION AND DETERMINED NOT TO RESULT IN A SIGNIFICANT NET EMISSIONS INCREASE, IF AN OWNER OR OPERATOR SUBSEQUENTLY REEVALUATES PROJECTED ACTUAL EMISSIONS AND DETERMINES THAT THE PROJECT HAS RESULTED OR WILL NOW RESULT IN A SIGNIFICANT NET EMISSIONS INCREASE, THE OWNER OR OPERATOR SHALL:

A. REQUEST THAT THE ADMINISTRATIVE AUTHORITY LIMIT THE POTENTIAL TO EMIT OF THE AFFECTED EMISSIONS UNITS AS APPROPRIATE VIA FEDERALLY ENFORCEABLE CONDITIONS SUCH THAT A SIGNIFICANT NET EMISSIONS INCREASE WILL NO LONGER RESULT; OR

B. SUBMIT A REVISED PSD APPLICATION WITHIN 180 DAYS.

S. Reserved.

T. Reserved.

U. Reserved.

V. Innovative Control Technology

1. An owner or operator of a proposed major stationary source or major modification may request the administrative authority in writing, no later than the close of the comment period under Subsection Q.2.e of this Section, to approve a system of innovative control technology.

2. The administrative authority may, with the consent of the governor of affected states, determine that the source or 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 Paragraph J.2 of this Section by a date specified by the administrative authority. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

c. the source or modification would meet the requirements of Subsections J and K of this Section, 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 administrative authority;

d. the source or modification would not, before the date specified by the administrative authority:

i. cause or contribute to a violation of an applicable national ambient air quality standard; or

ii. impact any area where an applicable increment is known to be violated;

e. the provisions of Subsection P of this Section, relating to Class I areas, have been satisfied with respect to all periods during the life of the source or modification;

f. all other applicable requirements including those for public participation have been met.

3. The administrative authority shall withdraw any approval to employ a system of innovative control technology made under this Subsection, 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 administrative authority decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

4. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with Paragraph V.3 of this Section, the administrative authority may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

W. Permit Rescission

1. Any permit issued under this Section or a prior version of this Section shall remain in effect, unless and until it expires under Subsection R of this Section or is rescinded.

2. Any owner or operator of a stationary source or modification who holds a permit for the source or modification that was issued under any earlier version of this Section, may request that the administrative authority rescind the permit or a particular portion of the permit.

3. The administrative authority shall grant an application for rescission if the application shows that this Section, as it existed at the time the permit was issued, would not apply to the source or modification.

4. If the administrative authority rescinds a permit under this Subsection, the public shall be given adequate notice of the rescission. Publication of an announcement of rescission in a newspaper of general circulation in the affected region within 60 days of the rescission shall be considered adequate notice.

X. Clean Unit Test for Emissions Units That are Subject to BACT or LAER. An owner or operator of a major stationary source has the option of using the Clean Unit test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the following provisions.

1. Applicability. The provisions of this Subsection apply to any emissions unit for which an administrative authority has issued a major NSR permit within the last 10 years.

2. General Provisions for Clean Units. The following provisions apply to a Clean Unit.

a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with Paragraph X.4 of this Section, and before the expiration date, as determined in accordance with Paragraph X.5 of this Section, will be considered to have occurred while the emissions unit was a Clean Unit.

b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in Subparagraph X.6.d of this Section, the emissions unit remains a Clean Unit.

c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in Subparagraph X.6.d of this Section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit requalifies as a Clean Unit in accordance with Subparagraph X.3.c of this Section. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of Subparagraphs A.4.a-d and f of this Section as if the emissions unit is not a Clean Unit.

3. Qualifying or Requalifying to Use the Clean Unit Applicability Test. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in Subparagraphs X.3.a and b of this Section. After the original Clean Unit expires in accordance with Paragraph X.5 of this Section or is lost in accordance with Subparagraph X.2.c of this Section, such emissions unit may requalify as a Clean Unit under either Subparagraph X.3.c of this Section, or under the Clean Unit provisions in Subsection Y of this Section. To requalify as a Clean Unit under Subparagraph X.3.c of this Section, the emissions unit must obtain a new major NSR permit issued

through the applicable PSD program and meet all the criteria in Subparagraph X.3.c of this Section. The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

a. Permitting Requirement. The emissions unit must have received a major NSR permit within the last 10 years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

b. Qualifying Air Pollution Control Technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes *pollution prevention* as defined in Subsection B of this Section or work practices, that meets both the following requirements.

i. The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for the Clean Unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

ii. The owner or operator made an investment to install the control technology. For the purpose of this determination, an *investment* includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

c. Requalifying for the Clean Unit Designation. The emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT or LAER, and the emissions unit must meet the requirements in Subparagraphs X.3.a and b of this Section.

4. Effective Date of the Clean Unit Designation. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner or operator may begin to use the Clean Unit test to determine whether a project at the emissions unit is a major modification) is determined according to one of the following provisions, as applicable.

a. For original Clean Unit designation, and emissions units that requalify as Clean Units by implementing new control technology to meet current-day BACT, the effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date the administrator approves these regulations as part of the State Implementation Plan.

b. For emissions units that requalify for the Clean Unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

5. Clean Unit Designation Expiration. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner or operator may no longer use the Clean Unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to one of the following provisions, as applicable.

a. For original Clean Unit designation, and emissions units that requalify as Clean Units by implementing new control technology to meet current-day BACT, any emissions unit that automatically qualifies as a Clean Unit under Subparagraphs X.3.a and b of this Section or requalifies by implementing new control technology to meet current-day BACT under Subparagraph X.3.c of this Section, the Clean Unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or it expires at any time the owner or operator fails to comply with the provisions for maintaining Clean Unit designation in Paragraph X.7 of this Section.

b. For emissions units that requalify for the Clean Unit designation using an existing control technology, any emissions unit that requalifies as a Clean Unit under Subparagraph X.3.c of this Section using an existing control technology, the Clean Unit designation expires 10 years after the effective date; or it expires any time the owner or operator fails to comply with the provisions for maintaining Clean Unit designation in Paragraph X.7 of this Section.

6. Required Title V Permit Content for a Clean Unit. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable Title V permit program under 40 CFR Part 70, but no later than when the Title V permit is renewed, the Title V permit for the major stationary source must include the following terms and conditions related to the Clean Unit:

a. a statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies;

b. the effective date of the Clean Unit designation. If this date is not known when the Clean Unit designation is initially recorded in the Title V permit (e.g., because the air pollution control technology is not yet in service), the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the administrative authority of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

c. the expiration date of the Clean Unit designation. If this date is not known when the Clean Unit designation is initially recorded into the Title V permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the administrative authority of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

d. all emission limitations and work practice requirements adopted in conjunction with BACT, and any physical or operational characteristics that formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput);

e. monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation;

f. terms reflecting the owner's or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in Paragraph X.7 of this Section.

7. Maintaining the Clean Unit Designation. To maintain the Clean Unit designation, the owner or operator must conform to all of the following restrictions. This Paragraph applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

a. The Clean Unit must comply with the emission limitations and/or work practice requirements adopted in conjunction with the BACT that is recorded in the major NSR permit, and subsequently reflected in the NSR and associated Title V permit. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or

operational characteristics that formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput).

b. The Clean Unit must comply with any terms and conditions in the NSR permit and associated Title V permit related to the unit's Clean Unit designation.

c. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

8. Netting at Clean Units. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (i.e., must not be used in a "netting analysis"), unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires, or unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

9. Effect of Redesignation on the Clean Unit Designation. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must requalify under the requirements that are currently applicable in the area.

Y. Clean Unit Provisions for Emissions Units That Achieve an Emission Limitation Comparable to BACT. An owner or operator of a major stationary source has the option of using the Clean Unit test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the following provisions.

1. Applicability. The provisions of this Subsection apply to emissions units that do not qualify as Clean Units under Subsection X of this Section, but which are achieving a level of emissions control comparable to BACT, as determined by the administrative authority in accordance with this Subsection.

2. General Provisions for Clean Units. The following provisions apply to a Clean Unit designated under this Subsection.

a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with Paragraph Y.5 of this Section, and before the expiration date, as determined in accordance with Paragraph Y.6 of this Section, will be considered to have occurred while the emissions unit was a Clean Unit.

b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, in accordance with Paragraph Y.4 of this Section, to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in Subparagraph Y.8.d of this Section, the emissions unit remains a Clean Unit.

c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, in accordance with Paragraph Y.4 of this Section, to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in Subparagraph Y.8.d of this Section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit requalifies as a Clean Unit in accordance with Subparagraph X.3.c of this Section. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of Subparagraphs A.4.a-d and f of this Section as if the emissions unit were not a Clean Unit.

3. Qualifying or Requalifying to Use the Clean Unit Applicability Test. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in Subparagraphs Y.3.a-c of this Section. After the original Clean Unit designation expires in accordance with Paragraph Y.6 of this Section or is lost in accordance with Subparagraph Y.2.c of this Section, such emissions unit may requalify as a Clean Unit under either Subparagraph Y.3.d of this Section or under the Clean Unit provisions in Subsection X of this Section. To requalify as a Clean Unit under Subparagraph Y.3.d of this Section, the emissions unit must obtain a new permit issued in accordance with the requirements in Paragraphs Y.7 and 8 of this Section and meet all the criteria in Subparagraph Y.3.d of this Section. The administrative authority will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

a. Qualifying Air Pollution Control Technologies. Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes *pollution prevention* as defined in Subsection B of this Section or work practices, that meets both the following requirements.

i. The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of Paragraph Y.4 of this Section. However, the emissions unit is not eligible for a Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the BACT determinations to which it is compared have resulted in a determination that no control measures are required).

ii. The owner or operator made an investment to install the control technology. For the purpose of this determination, an *investment* includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

b. Impact of Emissions From the Unit. The administrative authority must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality-related value, such as visibility, that has been identified for a federal Class I area by a federal land manager and for which information is available to the general public.

c. Date of Installation. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed prior to the effective date of this Subsection. However, for such emissions units, the owner or operator must have applied for the Clean Unit designation within two years after the plan requirements become effective. For technologies installed after the plan requirements become effective, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.

d. Requalifying as a Clean Unit. The emissions unit must obtain a new permit, in accordance with requirements in Paragraphs Y.7 and 8 of this Section, that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in Clause Y.3.a.i and Subparagraph Y.3.b of this Section.

4. Demonstrating Control Effectiveness Comparable to BACT. The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of Subparagraph Y.3.a of this Section according to either Subparagraph Y.4.a or b of this Section. Subparagraph Y.4.c of this Section specifies the time for making this comparison.

a. Comparison to Previous BACT and LAER Determinations. The administrative authority maintains an on-line database of previous determinations of RACT, BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a BACT or LAER determination has been made within the preceding five years and entered into the RBLC, and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The administrative authority shall also compare this presumption to any additional BACT or LAER determinations of which he or she is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

b. The Substantially-as-Effective Test. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under Paragraph Y.7 of this Section. The administrative authority shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

c. Time of Comparison

i. Emissions Units with Control Technologies that Were Installed Before the Effective Date of State Implementation Plan Requirements Implementing This Subsection. The owner or operator of an emissions unit whose control technology was installed before the effective date of plan requirements implementing this Paragraph may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in Paragraph Y.6 of this Section.

ii. Emissions Units with Control Technologies that Are Installed After the Effective Date of State Implementation Plan Requirements Implementing This Subsection. The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

5. Effective Date of the Clean Unit Designation. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner or operator may begin to use the Clean Unit test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by Paragraph Y.7 of this Section is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

6. Clean Unit Designation Expiration. If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, then the Clean Unit designation expires 10 years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires 10 years from the effective date of the Clean Unit designation, as determined according to Paragraph Y.5 of this Section. In addition, for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in Paragraph Y.9 of this Section.

7. Procedures for Designating Emissions Units as Clean Units. The administrative authority shall designate an emissions unit a Clean Unit only by issuing a permit through a permitting program that has been approved by the administrator and that conforms with the requirements of 40 CFR 51.160-164, including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit must also meet the requirements in Paragraph Y.8 of this Section.

8. Required Permit Content. The permit required by Paragraph Y.7 of this Section shall include the following terms that shall be incorporated into the major stationary source's Title V permit in accordance with the provisions of the applicable Title V permit program under 40 CFR Part 70, but no later than when the Title V permit is renewed:

a. a statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies;

b. the effective date of the Clean Unit designation. If this date is not known when the administrative authority issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the administrative authority of the exact date. This specific effective date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

c. the expiration date of the Clean Unit designation. If this date is not known when the administrative authority issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the administrative authority of the exact date. The expiration date must be added to the source's Title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the Title V permit for any reason, whichever comes first, but in no case later than the next renewal;

d. all emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to ensure that the control technology continues to achieve an emission limitation comparable to BACT, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT (e.g., possibly the emissions unit's capacity or throughput);

e. monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation. (see Paragraph Y.9 of this Section);

f. terms reflecting the owner's or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in Paragraph Y.9 of this Section.

9. Maintaining a Clean Unit Designation. To maintain the Clean Unit designation, the owner or operator must conform to all of the following restrictions. This Paragraph applies independently to each pollutant for which the administrative authority has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

a. The Clean Unit must comply with the emission limitations and/or work practice requirements adopted to ensure that the control technology continues to achieve emissions control comparable to BACT.

b. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emissions control that is comparable to BACT (e.g., possibly the emissions unit's capacity or throughput).

c. Reserved.

d. The Clean Unit must comply with any terms and conditions in the Title V permit related to the unit's Clean Unit designation.

e. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

10. Netting at Clean Units. Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (i.e., must not be used in a "netting analysis") unless such use occurs before the date the administrator approves the revision to the State Implementation Plan to include this Section or after the Clean Unit designation expires, or unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

11. Effect of Redesignation on a Clean Unit Designation. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost in accordance with Subparagraphs X.2.c and Y.2.c of this Section, it must requalify under the requirements that are currently applicable.

Z. Pollution Control Projects (PCPs). PCPs may be approved according to the following provisions.

1. Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the administrative authority if the project is listed in Subparagraphs B.Pollution Control Project.a-f of this Section, or if the project is not listed, then the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the administrative authority consistent with the requirements in Paragraph Z.5 of this Section. Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in Paragraph Z.2 of this Section, and the notice or permit application must contain the information required in Paragraph Z.3 of this Section.

2. Any project that relies on the PCP exclusion must meet the following requirements.

a. Environmentally Beneficial Analysis. The environmental benefit from the emissions reductions of pollutants regulated under the Clean Air Act must outweigh the

environmental detriment of emissions increases in pollutants regulated under the Clean Air Act. A statement that a technology from Subparagraphs B.Pollution Control Project.a-f of this Section, is being used shall be presumed to satisfy this requirement.

b. Air Quality Analysis. The emissions increases from the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality-related value, such as visibility, 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. Content of Notice or Permit Application. In the notice or permit application sent to the administrative authority, the owner or operator must include, at a minimum, the following information:

a. a description of the project;
b. the potential emissions increases and decreases of any pollutant regulated under the Clean Air Act and the projected emissions increases and decreases using the method in Paragraph A.4 of this Section that will result from the project, and a copy of the environmentally beneficial analysis required by Subparagraph Z.2.a of this Section;

c. a description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in LAC 33:III.507.H.1;

d. a certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by Subparagraphs Z.2.a and b of this Section, in a manner that is consistent with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants;

e. demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by Subparagraph Z.2.b of this Section. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

4. Notice Process for Listed Projects. For projects listed in Subparagraphs B.Pollution Control Project.a-f of this Section, the owner or operator may begin actual construction of the project immediately after notice is sent to the administrative authority, unless otherwise prohibited under requirements of the applicable State Implementation Plan. The owner or operator shall respond to any requests by the administrative authority for additional information that the administrative authority determines is necessary to evaluate the suitability of the project for the PCP exclusion.

5. Permit Process for Unlisted Projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in Subparagraphs B.Pollution Control Project.a-f of this Section, the project must be approved by the administrative authority and recorded in a State Implementation Plan-approved permit using procedures that are consistent with 40 CFR 51.160 and 51.161. This includes the requirement that the administrative authority provide the public with notice of the proposed approval and with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public to submit comments. The administrative authority must address all material comments received by the end of the comment period before taking final action on the permit.

6. Operational Requirements. Upon installation of the PCP, the owner or operator must comply with the following requirements.

a. General Duty. The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by Subparagraphs Z.2.a and b of this Section, in a manner that is consistent with information submitted in the notice

or permit application required by Paragraph Z.3 of this Section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

b. Recordkeeping. The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in Subparagraph Z.6.a of this Section.

c. Permit Requirements. The owner or operator must comply with any provisions in the State Implementation Plan-approved permit related to use and approval of the PCP exclusion.

d. Generation of Emission Reduction Credits. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner or operator may generate a credit for the difference between the level of reduction that was used to qualify for the PCP exclusion and the new emissions limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

AA. Actuals PALs. The following provisions govern actuals PALs.

1 Applicability

a. The administrative authority may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this Subsection. The term "PAL" shall mean "actuals PAL" throughout this Subsection.

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 this Subsection, and complies with the PAL permit:

i. is not a major modification for the PAL pollutant;

ii. does not have to be approved through the PSD program; and

iii. is not subject to the provisions in Paragraph R.4 of this

Section (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

c. Except as provided under Clause AA.1.b.iii of this Section, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

2. Definitions. For the purposes of this Subsection, the following definitions apply. When a term is not defined in this Paragraph, it shall have the meaning given in Subsection B of this Section or in the Clean Air Act.

a. Actuals PAL—a PAL for a major stationary source based on the baseline actual emissions, as defined in Subsection B of this Section, of all emissions units, as defined in Subsection B of this Section, at the source that emit or have the potential to emit the PAL pollutant.

b. Allowable Emissions—as defined in Subsection B of this Section, except for the following modifications.

i. 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.

ii. An emissions unit's potential to emit shall be determined using the definition in Subsection B of this Section, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

c. Major Emissions Unit—

i. any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

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

d. *Plantwide Applicability Limitation (PAL)*—an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this Subsection.

e. *PAL Effective Date*—generally, the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

f. *PAL Effective Period*—the period beginning with the PAL effective date and ending 10 years later.

g. *PAL Major Modification*—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, notwithstanding the definitions for *major modification* and *net emissions increase* in Subsection B of this Section.

h. *PAL Permit*—the major NSR permit, the minor NSR permit, or the state operating permit under a program that is approved into the State Implementation Plan or the Title V permit issued by the administrative authority that establishes a PAL for a major stationary source.

i. *PAL Pollutant*—the pollutant for which a PAL is established at a major stationary source.

j. *Significant Emissions Unit*—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 Subsection B of this Section or in the Clean Air Act, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a *major emissions unit* as defined in Subparagraph AA.2.c of this Section.

k. *Small Emissions Unit*—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 Subsection B of this Section or in the Clean Air Act, whichever is lower.

3. Permit Application Requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the administrative authority 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 or state 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;

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 AUTHORIZED emissions associated with startup, AND 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 Subparagraph AA.13.a of this Section.

4. General Requirements for Establishing PALs

a. The administrative authority is allowed to establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met.

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

ii. The PAL shall be established in a PAL permit that meets the public participation requirements in Paragraph AA.5 of this Section.

iii. The PAL permit shall contain all the requirements of Paragraph AA.7 of this Section.

iv. 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.

v. Each PAL shall regulate emissions of only one pollutant.

vi. Each PAL shall have a PAL effective period of 10 years.

vii. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Paragraphs AA.12-14 of this Section 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 that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(i) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

5. Public Participation Requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 51.161. This includes the requirement that the administrative authority provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The administrative authority must address all material comments before taking final action on the permit.

6. Setting the 10-year Actuals PAL Level

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

b. For newly-constructed units, which do 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 Subparagraph AA.6.a of this Section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

7. Contents of the PAL Permit. The PAL permit shall contain, at a minimum, the following information:

a. the PAL pollutant and the applicable source-wide emission limitation in tons per year;

b. the PAL permit effective date and the expiration date of the PAL (PAL effective period);

c. specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Paragraph AA.10 of this Section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period, but shall remain in effect until a revised PAL permit is issued by an administrative authority;

d. a requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions;

e. a requirement that, once the PAL expires, the major stationary source is subject to the requirements of Paragraph AA.9 of this Section;

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 Subparagraph AA.13.a of this Section;

g. a requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Paragraph AA.12 of this Section;

h. a requirement to retain the records required under Paragraph AA.13 of this Section on site. Such records may be retained in an electronic format;

i. a requirement to submit the reports required under Paragraph AA.14 of this Section by the required deadlines;

j. any other requirements that the administrative authority deems necessary to implement and enforce the PAL.

8. PAL Effective Period and Reopening of the PAL Permit

a. PAL Effective Period. The administrative authority shall specify a PAL effective period of 10 years.

b. Reopening of the PAL Permit

i. During the PAL effective period, the administrative authority must reopen the PAL 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 40 CFR 51.165(a)(3)(ii); and

(c). revise the PAL to reflect an increase in the PAL as provided under Paragraph AA.11 of this Section.

ii. The administrative authority shall have discretion to reopen the PAL permit in order to:

(a). reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) 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 state may impose on the major stationary source under the State Implementation Plan; and

(c). reduce the PAL if the administrative authority determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality-related value that has been identified

for a federal Class I area by a federal land manager and for which information is available to the general public.

iii. Except for the permit reopening in Subclause AA.8.b.i.(a) of this Section for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Paragraph AA.5 of this Section.

9. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Paragraph AA.10 of this Section shall expire at the end of the PAL effective period, and the following requirements 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 permit established according to the following procedures.

i. Within the time frame specified for PAL renewals in Subparagraph AA.10.b of this Section, 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 administrative authority, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Subparagraph AA.10.e of this Section, such distribution shall be made as if the PAL had been adjusted.

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

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

c. Until the administrative authority issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Clause AA.9.a.ii of this Section, 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 major NSR requirements if such change meets the definition of *major modification* in Subsection B of this Section.

e. The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period, except for those emission limitations that had been established in accordance with Paragraph R.4 of this Section, but were eliminated by the PAL in accordance with the provisions in Clause AA.1.b.iii of this Section.

10. Renewal of a PAL

a. The administrative authority shall follow the procedures specified in Paragraph AA.5 of this Section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the administrative authority.

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

c. Application Requirements. The application to renew a PAL permit shall contain the following information:

i. the information required in Subparagraphs AA.3.a-c of this Section;

ii. a proposed PAL level;

iii. the sum of the potential to emit of all emissions units under the PAL, with supporting documentation;

iv. any other information the owner or operator wishes the administrative authority to consider in determining the appropriate level for renewing the PAL.

d. PAL Adjustment. In determining whether and how to adjust the PAL, the administrative authority shall consider the options outlined in Clauses AA.10.d.i and ii of this Section. However, in no case may any such adjustment fail to comply with Clause AA.10.d.iii of this Section.

i. If the emissions level calculated in accordance with Paragraph AA.6 of this Section is equal to or greater than 80 percent of the PAL level, the administrative authority may renew the PAL at the same level without considering the factors set forth in Clause AA.10.d.ii of this Section.

ii. The administrative authority may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the administrative authority in his or her written rationale.

iii. Notwithstanding Clauses AA.10.d.i and ii of this Section:

(a) if the potential to emit of the major stationary source is less than the PAL, the administrative authority shall adjust the PAL to a level no greater than the potential to emit of the source; and

(b) the administrative authority shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Paragraph AA.11 of this Section regarding increasing a PAL.

e. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the administrative authority has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

11. Increasing a PAL During the PAL Effective Period

a. The administrative authority may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

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

ii. 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 units, exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

iii. The owner or operator shall obtain a major NSR permit for all emissions units identified in Clause AA.11.a.i of this Section, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units

shall comply with any emissions requirements resulting from the major NSR process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

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

b. The administrative authority 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 Clause AA.11.a.ii of this Section, plus the sum of the baseline actual emissions of the small emissions units.

c. The PAL permit shall be revised to reflect the increased PAL level in accordance with the public notice requirements of Paragraph AA.5 of this Section.

12. Monitoring Requirements for PALs

a. General Requirements

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

ii. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Clauses AA.12.b.i-iv of this Section and must be approved by the administrative authority.

iii. Notwithstanding Clause AA.12.a.ii of this Section, the owner or operator may also employ an alternative monitoring approach that meets the requirements of Clause AA.12.a.i of this Section if approved by the administrative authority.

iv. Failure to use a monitoring system that meets the requirements of this Paragraph 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 Subparagraphs AA.12.c-i of this Section:

i. mass balance calculations for activities using coatings or solvents;

ii. CEMS;

iii. CPMS or PEMS; and

iv. emission factors.

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

i. 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;

ii. 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

iii. 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 shall use the highest value of the range to calculate the PAL pollutant emissions unless the administrative authority 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:

i. CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

ii. CEMS must sample, analyze and record data at least every 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:

i. the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

ii. each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the administrative authority, 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:

i. all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

ii. the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

iii. 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 months of PAL permit issuance, unless the administrative authority 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 PAL permit.

h. Notwithstanding the requirements in Subparagraphs AA.12.c-g of this Section, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the administrative authority shall, at the time of permit issuance:

i. establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

ii. determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters 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 administrative authority. Such testing must occur at least once every five years after issuance of the PAL.

13. Recordkeeping Requirements

a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of Subsection AA of this Section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

i. a copy of the PAL permit application and any applications for revisions to the PAL; and

ii. each annual certification of compliance in accordance with Title V of the Clean Air Act and the data relied on in certifying the compliance.

14. Reporting and Notification Requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the administrative authority in accordance with the applicable Title V operating permit program. The reports shall meet the following requirements.

a. Semiannual Report. The semiannual report shall be submitted to the administrative authority within 30 days of the end of each reporting period. This report shall contain the following information:

i. the identification of the owner or operator and the permit number;

ii. total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded in accordance with Subparagraph AA.13.a of this Section;

iii. 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;

iv. a list of any emissions units modified or added to the major stationary source during the preceding 6-month period;

v. 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;

vi. a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Subparagraph AA.12.g of this Section;

vii. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

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

i. the identification of the owner or operator and the permit number;

ii. the PAL requirement that experienced the deviation or that was exceeded;

iii. emissions resulting from the deviation or the exceedance; and

iv. a signed statement by the responsible official, as defined by the applicable Title V operating permit program, certifying the truth, accuracy, and completeness of the information provided in the report.

c. Revalidation Results. The owner or operator shall submit to the administrative authority the results of any revalidation test or method within three months after completion of such test or method.

15. Transition Requirements

a. No reviewing authority may issue a PAL that does not comply with the requirements of this Subsection after the administrator has approved regulations incorporating these requirements into the State Implementation Plan.

b. The administrative authority may supersede any PAL that was established prior to the date of approval of the State Implementation Plan by the administrator with a PAL that complies with the requirements of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality

and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of Environmental Assessment, LR 31: