

**METROPOLITAN HEALTH DEPARTMENT  
DIVISION OF POLLUTION CONTROL**

**Regulation No. 13**

**Part 70  
Operating Permit Program**

**As provided for in the Code of Laws of the  
Metropolitan Government of Nashville and  
Davidson County, Tennessee, Chapter 10.56, Article  
I, Section 10.56.040 and Section 10.56.090.**

**Adopted October 12, 1993  
As Amended April 9, 2002  
As Amended December 2, 2010**

**As Amended TBD**

**By the Metropolitan Board of Health  
Nashville and Davidson County**

## TABLE OF CONTENTS

		PAGE
Section 13-1	Definitions	1
Section 13-2	Applicability	8
Section 13-3	Permit Application	9
Section 13-4	Permit Content	14
Section 13-5	Permit Issuance, Renewal, Reopening and Revisions	22
Section 13-6	Permit Review by EPA and Affected States	33
Section 13-7	Permit and Annual Emission Fees	35
Section 13-8	Severability	36
Section 13-9	Effective Date	36

## **PART 70**

### **OPERATING PERMIT PROGRAM**

This regulation establishes requirements for the issuance of operating permits to stationary sources. This regulation is promulgated as provided for in Section 10.56.090, “Board-Powers and Duties” and Section 10.56.040, “Operating Permit” of Chapter 10.56, “Air Pollution Control” of the Metropolitan Code of Laws.

#### **SECTION 13-1: Definitions**

All terms not defined herein shall have the meaning given in Chapter 10.56, “Air Pollution Control,” Section 10.56.010, “Definitions,” of the Metropolitan Code of Laws.

- (a) **“Act”** - means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.
- (b) **“Administrator”** - means the Administrator of the EPA or his designee.
- (c) **“Affected Source”** - means a source that includes one or more affected units.
- (d) **“Affected State”** - means Tennessee and/or Kentucky provided the State’s air quality may be affected by the issuance of an operation permit, permit modification or permit renewal.
- (e) **“Affected Unit”** - means a unit that is subject to emission reduction requirements or limitations under Title IV of the Act.
- (f) **“Applicable Requirements”** - means all of the following as they apply to emission units in sources (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):
  - (1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act;
  - (2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the Act;
  - (3) Any standard or other requirement under Section 111 of the Act, including Section 111(d);
  - (4) Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

- (5) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
  - (6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;
  - (7) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;
  - (8) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;
  - (9) Any standard or other requirement for tank vessels under Section 183(f) of the Act;
  - (10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
  - (11) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.
- (g) **“Area Source”** - means any stationary source that is not a major source.
  - (h) **“Designated Representative”** - means a responsible person or official authorized by the owner or operator of a source to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a source, and the submission of and compliance with, permits, permit applications, and compliance plans for the source.
  - (i) **“Director”** - means the chief administrative officer of the Metropolitan Board of Health or his designated representative.
  - (j) **“Draft Permit”** - means the version of a permit for which the Director offers public participation under Section 13-5 or affected State review under Section 13-6 of this Regulation.
  - (k) **“Emissions Unit”** - means any article, machine or process equipment or other contrivance that emits or has the potential to emit any regulated pollutant or any pollutant listed under Section 112(b) of the Act.
  - (l) **“Final Action”** - means the issuance or denial of the proposed permit by the Director.
  - (m) **“Final Permit”** - means the version of a permit issued by the Director that has completed all review procedures required by Sections 13-5 and 13-6 of this Regulation.
  - (n) **“Fugitive Emissions”** - means any emission emitted from any source other than through a stack.

- (o) **“General Permit”** - means a permit that meets the requirements of Section 13-4(d).
- (p) **“Major Source”** - means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in Paragraph (1), (2), or (3) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.
  - (1) A major source under Section 112 of the Act, which is defined as:
    - (i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.
    - (ii) For radionuclides, major sources shall have the meaning specified by the Administrator by rule.
  - (2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 tpy or more of any air pollutant ~~regulated~~ subject to regulation under the Clean Air Act (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source unless the source belongs to one of the following categories of stationary sources:
    - (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; or
- (xxvii) All other stationary source categories regulated by a standard promulgated under Section 111 or 112 of the Act as of August 7, 1980., ~~but only with respect to those air pollutants that have been regulated for that category.~~
- (3) Any stationary source located in an area designated as a marginal or moderate ozone nonattainment with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen.
- (q) **“Permit”** - means any permit or group of permits governing a source that is issued, renewed, amended, or revised pursuant to this Regulation.
- (r) **“Permit Application”** - means an application for an operating permit, permit revision, permit renewal, permit reopening and any other such application as may be required.
- (s) **“Permit Modification”** - means a revision to a permit that meets the requirements of Section 13-5 of this Regulation.
- (t) **“Potential to Emit”** - means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator.
- (u) **“Proposed Permit”** - means the version of a permit that the Director proposes to issue and forwards to the Administrator for review in compliance with Section 13-6 of this Regulation.
- (v) **“Regulated Air Pollutant”** - means the following:
- (1) Nitrogen oxides or any volatile organic compounds;
  - (2) Any pollutant for which a national ambient air quality standard has been promulgated;
  - (3) Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
  - (4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;

- (5) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j) and (r) of the Act, including the following:
  - (i) Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen (18) months after the applicable date established pursuant to Section 112(e) of the Act; and
  - (ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act, have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.
- (w) **“Renewal”** - means the process by which a permit is reissued at the end of its term.
- (x) **“Responsible Official”** - means one of the following:
  - (1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit, and either:
    - (i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
    - (ii) The delegation of authority to such representatives is approved in advance by the permitting authority;
  - (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
  - (3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this Part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or
  - (4) For affected sources:



- (i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
  - (ii) The designated representative for any other purposes under Part 70.
- (y) **“State”** - means any non-Federal Director, including any local agency, interstate association or statewide program. When such meaning is clear from the context “state” shall have its conventional meaning.
- (z) **“Subject to Regulation”** – means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:
  - (1) Greenhouse gases (GHGs), the air pollutant defined in Section 86.1818-12(a) of 40 CFR Part 86 as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO<sub>2</sub> equivalent emissions.
  - (2) The term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas’s associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 – Global Warming Potentials, and summing the resultant value for each to compute a tpy CO<sub>2</sub>e.

## SECTION 13-2: Applicability

- (a) This regulation establishes permitting requirements for the following sources:
- (1) Any major source;
  - (2) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act;
  - (3) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
  - (4) Any source in a source category designated by the Administrator; and
  - (5) Any affected source under Title IV of the Act.
- (b) Source category exemptions:
- (1) All sources listed in Paragraph (a) of this Section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act, are exempt until such time as the Administrator completes a rulemaking to determine how the program should be structured for non-major sources;
  - (2) In the case of non-major sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a permit at the time that the new standard is promulgated;
  - (3) ~~Any source listed in Paragraph (a) of this Section exempt from the requirement to obtain a permit under this Section may opt to apply for a permit under this Regulation; and~~ Reserved.
  - (4) The following source categories are exempt from the obligation to obtain a permit:
    - (i) All sources and source categories that would be required to obtain a permit solely because they are subject to Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and
    - (ii) All sources and source categories that would be required to obtain a permit solely because they are subject to Part 61, Subpart M- National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145; Standard for Demolition and Renovation;
  - (5) Fugitive emissions shall be included in the permit application and permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

### **SECTION 13-3: Permit Application**

After the effective date of this Regulation the owner or operator of any source covered by this Regulation shall submit a timely and complete permit application in accordance with this Section.

(a) Timely application.

- (1) A timely application for a source applying for a permit for the first time is one that is submitted within twelve (12) months after the source becomes subject to the permit program or on or before such earlier date as established by the Director.
- (2) Sources required to meet the requirements under Section 112(g) of the Act or to have a permit under Section 10.56.020, "Construction Permits" of Chapter 10.56, "Air Pollution Control" shall file a complete application to obtain an operating permit or operating permit revision prior to commencing construction.
- (3) Sources that become subject to this Regulation after the effective date shall submit permit applications no later than twelve (12) months after the source applicability date.
- (4) For purposes of permit renewal, a timely application is one that is submitted at least six (6) months prior to the date of permit expiration, or such other longer time as established by the Director. In no event shall the time be greater than eighteen (18) months.

(b) Complete application.

- (1) To be deemed complete, an application must provide all the information required pursuant to Paragraph (e) of this Section, except that applications for permit revision need supply such information only if it is related to the proposed change. The information must be certified by a responsible official that it is true, accurate, and complete to the best of his knowledge.
- (2) The Director must make a determination within sixty (60) days of receipt of application that an application is complete. Upon failure of the Director to make this determination the said application shall be deemed complete, except as provided in Section 13-5, Paragraph (a)(4). If while processing an application that has been deemed to be complete, it is determined that additional information is necessary to evaluate or take final action, the Director may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit as set forth in Section 13-5, Paragraph (b) shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline.

(c) Confidential information.

- (1) In the cases where a source has submitted information under a claim of confidentiality, the Director may require the source to submit a copy of such information directly to the Administrator.

(d) Application deficiencies.

- (1) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information no later than sixty (60) days after such discovery.
- (2) In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.
- (3) If while processing an application that has been deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, he may request such information in writing and set a reasonable deadline for a response.

(e) Application forms and required information.

The owner or operator of any source covered by this Regulation must submit the following information in duplicate on forms furnished by the Metropolitan Health Department:

- (1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;
- (2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with alternate scenarios identified by the source;
- (3) The following emission information:
  - (i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit except where such units are exempt under Section 10.56.050, "Exemption" of Chapter 10.56 of the Metropolitan Code of Laws. The Director shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to Section 10.56.080, "Permit Fees" of Chapter 10.56 of the Metropolitan Code of Laws;

- (ii) Identification and description of all points of emissions described in Paragraph (3)(i) of this Section in sufficient detail to establish the basis for fees and applicability of requirements of the Act;
  - (iii) Emission rates in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;
  - (iv) The following information to the extent it is needed to determine or regulate emissions: fuels; fuel use; raw materials; production rates; and operating schedules;
  - (v) Identification and description of air pollution control equipment and compliance monitoring devices or activities;
  - (vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the source;
  - (vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act);
  - (viii) Calculations on which the information in Paragraphs (3)(i) through (vii) of this Section are based; and
  - (ix) A list of all insignificant activities exempted because of size or emission rate.
- (4) The following air pollution control requirements:
- (i) Citation and description of all applicable requirements; and
  - (ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement;
- (5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements;
- (6) An explanation of any proposed exemptions from otherwise applicable requirements;
- (7) Any additional information as determined to be necessary by the Director to define alternative operating scenarios identified by the source pursuant to Section 13-4, Paragraph (a)(7) of this Regulation or to define permit terms and conditions implementing Section 13-4, Paragraph (a)(8) and Section 13-5, Paragraph (e)(1)(i)(4) of this Regulation;
- (8) A statement certifying that a risk management plan, if applicable, or a schedule to submit such plan has been submitted in accordance with Section 112(r)(7) of the Act;
- (9) A compliance plan for all sources that contain the following:

- (i) A description of the compliance status of the source with respect to all applicable requirements;
- (ii) A description as follows:
  - (A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;
  - (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis; and
  - (C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
- (iii) A compliance schedule as follows:
  - (A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;
  - (B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement; and
  - (C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in non-compliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based;
- (iv) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation; and
- (v) The compliance plan content requirements specified in this Section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations;

(10) Requirements for compliance certification, including the following:

- (i) A certification of compliance with all applicable requirements by a responsible official consistent with Paragraph (f) of this Section;
  - (ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
  - (iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Director; and
  - (iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.
- (f) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

## **SECTION 13-4: Permit Content**

(a) Each permit issued under this Regulation shall include the following:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance:

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(ii) If an applicable implementation plan allows a determination of an alternative emission limit at a source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures; and

(iii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator;

(2) Permit duration.

(i) The Director shall issue permits for a term not to exceed five (5) years;

(3) Monitoring and related recordkeeping and reporting requirements:

(i) Each permit shall contain the following requirements with respect to monitoring:

(A) All emissions, monitoring, and analysis procedures or test methods required under the applicable requirements including any procedures and methods promulgated pursuant to Sections 114(a)(3) and 504(b) of the Act;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Paragraph (a)(3)(iii) of this Section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this Paragraph; and



- (C) As necessary, requirements concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods;
- (ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:
  - (A) Records of required monitoring information that include the following:
    - (1) The date, place as defined in the permit, and time of sampling or measurements;
    - (2) The date(s) analyses were performed;
    - (3) The company or entity that performed the analyses;
    - (4) The analytical techniques or methods used;
    - (5) The results of such analyses; and
    - (6) The operating conditions as existing at the time of sampling or measurement;
  - (B) Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;
- (iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:
  - (A) Submittal of reports of any required monitoring at least every six (6) months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Section 13-3 (f); and
  - (B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. For the purpose of this Section, prompt is defined as requiring reporting within one to ten days from the date on which the deviation occurs unless prompt is otherwise defined in the permit in relation to the degree and type of deviation likely to occur and the applicable requirements;
- (4) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;

(5) Provisions stating the following:

- (i) The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
  - (ii) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;
  - (iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;
  - (iv) The permit does not convey any property rights of any sort, or any exclusive privilege; and
  - (v) The permittee shall furnish to the Director, within a reasonable time, any information that he may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality;
- (6) A provision to insure that all emission fees are paid in accordance with the provisions of Section 10.56.080, "Permit Fees" of Chapter 10.56, "Air Pollution Control" of the Metropolitan Code of Laws;
- (7) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:
- (i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
  - (ii) May extend the permit shield described in paragraph (f) of this Section to all terms and conditions under each such operating scenario; and
  - (iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Regulation;
- (8) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable

requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

- (i) Shall include all terms required under Paragraphs (a) and (c) of this Section to determine compliance;
    - (ii) May extend the permit shield described in Paragraph (f) of this Section to all terms and conditions that allow such increases and decreases in emission; and
    - (iii) Must meet all applicable requirements and requirements of this Regulation;
  - (9) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.
- (b) Federally-enforceable requirements.
- (1) All terms and conditions in a permit, including provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.
  - (2) Notwithstanding Paragraph (b)(1) of this Section, the Director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of Sections 13-5 and 13-6 of this Regulation, other than those contained in this Paragraph (b) of this Section.
- (c) Compliance requirements. All permits shall contain the following elements with respect to compliance:
- (1) Consistent with (a)(3) of this Section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit shall contain certification by a responsible official that meets the requirements of Section 13-3(f);
  - (2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Director or an authorized representative to perform the following:
    - (i) Enter upon the permittee's premises where a source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
    - (ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

- (iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
  - (iv) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;
- (3) A schedule of compliance consistent with Section 13-3 Paragraph (e)(9) of this Regulation;
- (4) A requirement for submittal of progress reports consistent with an applicable schedule of compliance and Section 13-3 Paragraph (e)(9) of this Regulation to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Director. Such progress reports shall contain the following:
  - (i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
  - (ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;
- (5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
  - (i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the Director) of submissions of compliance certifications;
  - (ii) In accordance with Paragraph (a)(3) of this Section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
  - (iii) A requirement that the compliance certification include the following:
    - (A) The identification of each term or condition of the permit that is the basis of the certification;
    - (B) The compliance status;
    - (C) Whether compliance was continuous or intermittent;
    - (D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with Paragraph (a)(3) of this Section; and

- (E) Such other facts as the Director may require to determine the compliance status of the source;
  - (iv) A requirement that all compliance certifications be submitted to the Administrator as well as the Director; and
  - (v) Such additional requirements as may be specified pursuant to Section 114(a)(3) and 504(b) of the Act;
- (6) Such additional requirements as may be specified by the Director.
- (d) General permits.
  - (1) The Director may, after notice and opportunity for public participation provided under Section 13-5 Paragraph (h) of this Regulation, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Director shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of Paragraph (f) of this Section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program under Title IV of The Act.
  - (2) Sources that would qualify for a general permit must apply to the Director for coverage under the terms of the general permit or must apply for a permit consistent with Section 13-3 of this Regulation. The Director may, in the general permit, provide for applications which deviate from the requirements of Section 13-3 of this Regulation, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under Section 13-5 Paragraph (h) of this Regulation, the Director may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.
- (e) Temporary sources. The Director may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. No affected source shall be permitted as a temporary source. The operation must be temporary and involve at least one change of location during the term of the permit. Permits for temporary sources shall include the following:
  - (1) Conditions that will assure compliance with all applicable requirements at all authorized locations;
  - (2) Requirements that the owner or operator shall notify the Director at least ten (10) days in advance of each change in location; and

- (3) Conditions that assure compliance with all other provisions of this Section.
- (f) Permit shield.
- (1) Except as provided in this Regulation, the Director may expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:
    - (i) Such applicable requirements are included and are specifically identified in the permit; or
    - (ii) The Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof;
  - (2) A permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield;
  - (3) Nothing in this Paragraph or in any permit shall alter or affect the following:
    - (i) The provisions of Section 303 of the Act (emergency orders), including the authority of the Administrator under that section;
    - (ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
    - (iii) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act; or
    - (iv) The ability of EPA to obtain information from a source pursuant to Section 114 of the Act.
- (g) ~~Emergency provision.~~ Reserved.

- ~~(1) An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.~~
- ~~(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of Paragraph (g)(3) of this Section are met.~~

- ~~(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:~~
- ~~(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;~~
  - ~~(ii) The permitted facility was at the time being properly operated;~~
  - ~~(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and~~
  - ~~(iv) The permittee submitted notice of the emergency to the Director within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of Paragraph (a)(3)(iii)(B) of this Section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~
- ~~(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~
- ~~(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.~~

### **SECTION 13-5: Permit Issuance, Renewal, Reopening, and Revisions**

(a) Action on application.

- (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:
  - (i) The Director has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under Section 13-4 Paragraph (d) of this Regulation;
  - (ii) Except for modifications qualifying for minor permit modification procedures under Paragraphs (e)(2) and (3) of this Section, the Director has complied with the requirements for public participation under Paragraph (h) of this Section;
  - (iii) The Director has complied with the requirements for notifying and responding to affected States under Section 13-6 of this Regulation;
  - (iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this Section; and
  - (v) The Administrator has received a copy of the proposed permit and any notices required under Section 13-6 of this Regulation, and has not objected to issuance of the permit within the time period specified therein.
- (2) For those sources required to file initial applications within one (1) year of the effective date of this Regulation, the Director must take final action on at least one-third of those applications annually over a period not to exceed three (3) years after such effective date.
- (3) Except as noted in Paragraph (a)(2) of this Section, the Director shall take final action on each permit application (including a request for permit modification or renewal) within eighteen (18) months after receiving a complete application.
- (4) The Director shall promptly provide notice to the applicant of whether the application is complete. Unless the Director requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in Paragraphs (e)(1) and (2) of this Section, the Director need not require a completeness determination.
- (5) The Director shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Director shall send this statement to EPA and to any other person who requests it.



- (6) The submittal of a complete application shall not affect the requirement that any source have a construction permit in accordance with Section 10.56.020, "Construction Permits" of Chapter 10.56, "Air Pollution Control" of the Metropolitan Code of Laws.
  - (7) The Director shall take final action on any complete permit application containing an early reduction demonstration under Section 112(i)(5) of the Act within nine (9) months of receipt of the complete application.
- (b) Requirement for a permit. No source subject to this Regulation may operate after the time that it is required to submit a complete application under Section 13-3, except in compliance with a permit issued under this Regulation. If a source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a permit is not a violation of this Regulation until the Director takes final action on the permit application, except as noted in this Section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to Paragraph (a)(3) of this Section, and as required by Section 13-3 Paragraph (b) of this Regulation, the applicant fails to submit by the deadline specified in writing by the Director any additional information identified as being needed to process the application.
- (c) Permit renewal and expiration.
- (1) Permits being renewed are subject to the same procedural requirements as Paragraph (a) of this Section.
  - (2) If a timely and complete application for a permit renewal is submitted consistent with Section 13-3(a)(4) and the Director has not issued or denied the renewed permit before the end of the term of the previous permit, all terms and conditions of the permit including any permit shield granted pursuant to Section 13-4(f) shall remain in effect until the renewed permit has been issued or denied.
  - (3) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with Paragraph (b) of this Section and Section 13-3 Paragraph (a)(3) of this Regulation.
- (d) Administrative permit amendments.
- (1) An administrative permit amendment is a permit revision that:
    - (i) Corrects typographical errors;
    - (ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

- (iii) Requires more frequent monitoring or reporting by the permittee;
  - (iv) Allows for a change in ownership or operational control of a source where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Director; and
  - (v) Incorporates into the source permit the requirements from preconstruction review permits provided that such program meets the procedural requirements of this Section and any requirements of Section 13-6 of this Regulation that would be applicable to the change if it were subject to review as a permit modification, and the compliance requirements contained in Section 13-4 of this Regulation.
- (2) An administrative permit amendment may be made consistent with the following:
- (i) The Director shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that he designates any such permit revisions as having been made pursuant to this Paragraph;
  - (ii) The Director shall submit a copy of the revised permit to the Administrator;
  - (iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request; and
  - (iv) The source shall be subject to enforcement action if the change is later determined not to qualify for an administrative permit amendment.
- (3) The Director may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in Section 13-4 Paragraph (f) for administrative permit amendments made pursuant to Paragraph (d)(1)(v) of this Section, which meet the relevant requirements of Sections 13-4, 13-5, and 13-6 for significant permit modifications.
- (e) Permit modification. A permit modification is any revision to a permit that cannot be accomplished under the program's provisions for administrative permit amendments under Paragraph (d) of this Section.
- (1) Minor permit modification shall not exceed the following thresholds:
- (i) Criteria.

- (A) Minor permit modification procedures may be used only for those permit modifications that:
  - (1) Do not violate any applicable requirement;
  - (2) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
  - (3) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts or a visibility or increment analysis;
  - (4) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
    - (A) A legally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act; and
    - (B) An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;
  - (5) Are not modifications under any provision of Title I of the Act; and
  - (6) Are not required by Paragraph (e)(3) of this Section to be processed as a significant modification;
- (B) Notwithstanding Paragraphs (e)(1)(i)(A) and (e)(2)(i) of this Section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA;
- (ii) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of Section 13-3 Paragraph (e) of this Regulation and shall include the following:
  - (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

- (B) The source's suggested draft permit;
  - (C) Certification by a responsible official, consistent with Section 13-3 Paragraph (f), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
  - (D) Completed forms for the Director to use to notify the Administrator and affected States as required under Section 13-6;
- (iii) EPA and affected State notification. Within five (5) working days of receipt of a complete permit modification application, the Director shall meet its obligation under Section 13-6 Paragraphs (a)(1) and (b)(1) to notify the Administrator and affected States of the requested permit modification. The Director shall promptly send any notice required under Section 13-6 Paragraph (b)(3) to the Administrator;
- (iv) Timetable for issuance. The Director may not issue a final permit modification until after EPA's forty-five (45) day review period or until EPA has notified the Director that EPA will not object to issuance of the permit modification, whichever is first, although the Director can approve the permit modification prior to that time. Within ninety (90) days of the Director's receipt of an application under minor permit modification procedures or fifteen (15) days after the end of the Administrator's forty-five (45) day review period under Section 13-6 Paragraph (c), whichever is later, the Director shall:
- (A) Issue the permit modification as proposed;
  - (B) Deny the permit modification application;
  - (C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
  - (D) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by Section 13-6 Paragraph (a) of this Regulation;
- (v) A source may make any change proposed in a minor permit modification immediately after it files such application with the Director. After the facility makes such a change, and until the Director takes any of the actions specified in Paragraphs (e)(1)(iv)(A) through (C) of this Section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility

fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it; and

- (vi) The source may trade emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap. In order to exercise such an option, the permit applicant must ask the Director to issue such a permit. The permit must contain all terms required under Section 13-4, Paragraphs (a) and (c) to determine compliance, allowing for the trading of such emission increases and decreases with the emission cap specified in the permit, independent of otherwise applicable requirements.

The permit applicant shall include in its application, proposed replicable procedures and permit terms that ensure the emission trades are quantifiable and enforceable. The Director shall not be required to include in the emission trading provisions any emission units for which emissions are not quantifiable or for which there are not replicable procedures to enforce the emission trades.

The permit shall require compliance with all applicable requirements.

Under this Paragraph, the written notification shall state when the change will occur and shall describe the change in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit;

- (vii) The permit shield provision of Section 13-4 Paragraph (f) of this Regulation is not applicable to minor permit modifications or to changes made under Paragraph (v) of this Section;

- (2) Group processing of minor permit modifications. Consistent with this Paragraph, the Director may modify the procedure outlined in Paragraph (e)(1) of this Section to process groups of a source's applications for certain modifications eligible for minor permit modification processing;

- (i) Group processing of modifications may be used only for those permit modifications:

- (A) That meet the criteria for minor permit modification procedures under Paragraph (e)(1)(i)(A) of this Section; and

- (B) That collectively are below the threshold level. The threshold shall be ten (10) percent of the emissions allowed by the permit for the emission unit for which

the change is requested, twenty (20) percent of the applicable definition of a major source, or five (5) tons per year, whichever is least.

- (ii) Application. An application requesting the use of group processing procedures shall meet the requirements of Section 13-3(e) of this Regulation and shall include the following:
  - (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
  - (B) Completed application forms for the Director to use to notify the Administrator and the affected States as required under Section 13-6;
  - (C) The source's suggested draft permit;
  - (D) Certification by a responsible official, consistent with Section 13-3(f) of this Regulation, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used;
  - (E) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under Paragraph (e)(2)(i)(B) of this Section; and
  - (F) Certification, consistent with Section 13-3(f) of this Regulation, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.
- (iii) EPA and affected State notification. Within five (5) working days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold limit under Paragraph (e)(2)(i)(B) of this Section, the Director shall notify the Administrator and affected States of the requested permit modifications. The Director shall send any notice required under Section 13-6 Paragraph (b)(3) to the Administrator;
- (iv) Timetable for issuance. The provisions of Paragraph (e)(1)(iv) of this Section shall apply to modifications eligible for group processing, except that the Director shall take one of the actions specified in Paragraphs (e)(1)(iv)(A) through (D) of this Section within one hundred and eighty (180) days of receipt of the application or fifteen (15) days after the end of the forty-five (45) day EPA review period, whichever is later;

- (v) Ability to make changes. The provisions of Paragraph (e)(1)(v) of this Section shall apply to modifications eligible for group processing;
  - (vi) The permit shield under Section 13-4 Paragraph (f) of this Regulation is not applicable to group processing;
- (3) Significant permit modification is any of the following changes:
- (i) That is a Title I modification;
  - (ii) That does not qualify as minor permit modification or as an administrative amendment;
  - (iii) That is a removal of existing monitoring terms or conditions, or a substitution in those terms or conditions promulgated pursuant to Federal New Source Performance Standards (NSPS) or National Emissions Standards for Hazardous Air Pollutants (NESHAP); and
  - (iv) A change in existing monitoring permit terms or conditions and every relaxation of reporting, recordkeeping, permit terms or conditions.

Nothing herein shall be construed to preclude the permittee from making changes consistent with this Regulation that would render existing permit compliance terms and conditions irrelevant.

Significant permit modifications shall meet all requirements of this Regulation, including those for application, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The review for the majority of significant permit modifications shall be completed within nine (9) months after receipt of a complete application.

(4) Changes allowed at sources without requiring a permit revision are:

- (i) Sources are permitted to make changes without applying for a permit revision provided that the changes do not constitute a modification as defined by this Regulation or Title I of the Act and the changes do not exceed the allowable emission limits outlined in the permit and the owner or operator has obtained all construction permits required by Section 10.56.020, "Construction Permits" of the Metropolitan Code of Laws. For such changes, the facility must provide the Director and the Administrator with a written notification within thirty (30) days in advance of the proposed change containing a brief description of the proposed change within the permitted facility, the date on which the change will occur, any resulting change in emissions or pollutants emission, and any permit term or

condition that will no longer be applicable or any new applicable requirement that would apply as a result of the change.

- (ii) The change shall not qualify for the permit shield under Section 13-4(f).
- (iii) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated pollutant subject to an applicable requirement but not otherwise regulated under the permit and the emissions resulting for those changes.

(f) Reopening for cause.

- (1) Each permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
  - (i) Additional applicable requirements under the Act become applicable to a major source with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirements. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire unless the original permit has been extended pursuant to Section 13-5(C)(2);
  - (ii) The Director or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emission standards or other terms or conditions of the permit; and
  - (iii) The Director or the Administrator determines that the permit must be revised or revoked to assure compliance with the applicable requirements;
  - (iv) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.
- (2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable; and
- (3) Reopenings under Paragraph (f)(1) of this Section shall not be initiated before a notice of such intent is provided to the source by the director at least thirty (30) days in advance of the date that the permit is to be reopened, except that the Director may provide a shorter time period in the case of an emergency.



(g) Reopening for cause by EPA.

- (1) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to Paragraph (f) of this Section, the Administrator will notify the Director and the permittee of such finding in writing.
  - (2) The Director shall within ninety (90) days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate.
  - (3) The Director shall have ninety (90) days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.
  - (4) If the Director fails to submit a proposed determination pursuant to Paragraph (g)(2) of this Section or fails to resolve any objection pursuant to Paragraph (g)(3) of this Section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:
    - (i) Providing at least thirty (30) days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in Paragraphs (g)(1) through (g)(3) of this Section; and
    - (ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.
- (h) Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:
- (1) A public notice shall be given at least thirty (30) days prior to the scheduled date of the hearing by public advertisement in a newspaper or newspapers of general circulation within the Metropolitan Government area, to persons on a mailing list developed by the permitting authority, including those who request to be on the list. All hearings shall be conducted in accordance with Section 10.56.110, "Rules and Regulations - Hearings Procedure" of Chapter 10.56, "Air Pollution Control" of the Metropolitan Code of Laws;
  - (2) The notice shall identify the affected facility; the name and address of the permittee; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom

interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in Section 13-3 of this Regulation, and all other materials available to the Director that are relevant to the permit decision; a brief description of the comment procedures required by this Regulation; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled); and

- (3) The Director shall provide such notice and opportunity for participation by affected States as provided for by Section 13-6 of this Regulation.
- (4) The Director shall keep a record of the comments and the issues raised during the public participation process so that the Administrator may fulfill his obligation under Section 505 (b)(2) of the Act to determine whether a citizen petition may be granted. All such records shall be made available to the public.

### **SECTION 13-6: Permit Review by EPA and Affected States**

(a) Transmission of information to the Administrator.

- (1) The Director shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit. Upon agreement with the Administrator, the Director may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan.
- (2) The Director shall keep for five (5) years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain compliance with the requirements of the Act or this Regulation.

(b) Review by affected State.

- (1) The Director shall give notice of each draft permit to any affected State on or before the time that the Director provides notice to the public under Section 13-5 Paragraph (h) of this Regulation.
- (2) No final permit for which draft permit has been transmitted to an affected State will be issued until the affected State will be issued until the affected State has had an opportunity to review the proposed permit. The affected State shall have thirty (30) days from date of receipt of draft permit to submit written recommendations.
- (3) The Director, as part of the submittal of the proposed permit to the Administrator, shall notify the Administrator and any affected State in writing of any refusal by the Director to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Director's reasons for not accepting any such recommendation. The Director is not required to accept recommendations that are not based on applicable requirements or the requirements of this Regulation.

(c) EPA objection.

- (1) No permit for which an application must be transmitted to the Administrator under Paragraph (a) of this Section shall be issued if the Administrator objects to its issuance in writing within forty-five (45) days of receipt of the proposed permit and all necessary supporting information.

- (2) Any EPA objection under Paragraph (c)(1) of this Section shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The Administrator will provide the permit applicant a copy of the objection.
- (3) Failure of the Director to do any of the following also shall constitute grounds for an objection:
  - (i) Comply with Paragraphs (a) or (b) of this Section;
  - (ii) Submit any information necessary to review adequately the proposed permit; or
  - (iii) Process the permit under the procedures approved to meet with Section 13-5 Paragraph (h) of this Regulation except for minor permit modifications.
- (d) Public petitions to the Administrator. If the Administrator does not object in writing under Paragraph (c) of this Section, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator's forty-five (45) day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Section 13-5 Paragraph (h) of this Regulation, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this Paragraph, the Director shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to an EPA objection. If the Director has issued a permit prior to receipt of an EPA objection under this Paragraph, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in Section 13-5 Paragraphs (g)(3) and (g)(4) of this Regulation except in unusual circumstances, and the Director may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

### **SECTION 13-7: Permit and Annual Emission Fees**

The owner or operator of any source covered by this Regulation shall pay an annual emission fee in accordance with the provisions of Chapter 10.56, "Air Pollution Control," Section 10.56.080, "Permit Fees," Paragraph E, of the Metropolitan Code of Laws.

Fees collected from sources covered by this Regulation shall be sufficient to cover all reasonable (direct and indirect) costs of the permit program. These costs include, but are not limited to, the cost of the following activities as they relate to the operating permit program:

- (a) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- (b) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- (c) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
- (d) Implementing and enforcing the terms of any permit including adequate resources to determine which sources are subject to the program;
- (e) Emissions and ambient monitoring;
- (f) Modeling, analyses, or demonstrations; and
- (g) Preparing inventories and tracking emissions.

### **SECTION 13-8: Severability**

The provisions of any Part, Section, Subsection, Paragraph, phrase or clause of this Regulation that shall be adjudged invalid or unconstitutional by any court of competent jurisdiction, the judgment shall not affect, compare, or invalidate the remainder of this Regulation, but should be confined in its operation to the Part, Section, Subsection, Paragraph, phrase or clause of this Regulation that shall not be directly involved in the controversy in which such judgment shall have been redeemed.

### **SECTION 13-9: Effective Date**

The requirements in this Regulation are not effective until thirty (30) days after the date of approval of this Regulation by the Administrator.

Sources become subject to this Regulation either on the effective date of this Regulation or upon issuance of a construction permit in accordance with the provisions of Section 10.56.020, "Construction Permits" of Chapter 10.56, "Air Pollution Control" of the Metropolitan Code of Law, whichever is later.

A public notice shall be published in a newspaper of general circulation within the Metropolitan Government area giving the effective date of the approved program. Failure of the Health Department to publish this notice shall not affect the effective date of this Regulation.