

the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to a delegate agency, the delegate agency will revise, reopen, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part 71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(f), shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(m) *Exemption for certain territories.* Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas Islands, the Administrator may exempt any source or

class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of section 112 (g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph (m) shall be considered final action by the Administrator for the purposes of section 307(b) of the Act.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph (m) and of the approval or rejection of such petition and the basis for such action.

(n) *Retention of records.* The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

[61 FR 34228, July 1, 1996, as amended at 64 FR 8262, Feb. 19, 1999; 67 FR 38330, June 3, 2002]

#### § 71.5 Permit applications.

(a) *Duty to apply.* For each part 71 source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12

months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date.

(ii) Part 71 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 71 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date. Where an existing part 70 or 71 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months but not more than 18 months prior to expiration of the part 70 or 71 permit.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. To be found complete, an initial or renewal application must remit payment of fees owed under the fee schedule established pursuant to § 71.9(b). Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete,

except as otherwise provided in § 71.7(a)(4). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it 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 § 71.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* An applicant may assert a business confidentiality claim for information requested by the permitting authority using procedures found at part 2, subpart B of this chapter.

(b) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The permitting authority shall provide sources a standard application form or forms. The permitting authority may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule established pursuant to § 71.9.

(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 each alternate scenario identified by the source.

(3) The following emissions-related 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 exempted under this paragraph (c). The permitting authority 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 established pursuant to § 71.9(b).

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions 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 part 71 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 (c)(3) (i) through (vii) of this section is based.

(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) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing § 71.6(a)(10) or § 71.6(a)(13).

(8) A compliance plan for all part 71 sources that contains all 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.

(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

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provision, unless a more detailed schedule is expressly required by the applicable requirement.

(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 noncompliance 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 noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph 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 parts 72 through 78 of this chapter with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

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

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, record-keeping, 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 permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under parts 72 through 78 of this chapter.

(11) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to calculate the fee amount required under the schedule established pursuant to § 71.9 of this part.

(i) *Insignificant activities:*

(A) Mobile sources;

(B) Air-conditioning units used for human comfort that are not subject to applicable requirements under title VI of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(C) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(D) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(E) Noncommercial food preparation;

(F) Consumer use of office equipment and products;

(G) Janitorial services and consumer use of janitorial products; and

(H) Internal combustion engines used for landscaping purposes.

(ii) *Insignificant emissions levels.* Emissions meeting the criteria in paragraph (c)(11)(ii)(A) or (c)(11)(ii)(B) of this section need not be included in the application, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption

applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(A) *Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).* Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 2 tpy.

(B) *Emission criteria for HAP.* Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less.

(d) 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.

#### § 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(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) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of 40 CFR parts 72 through 78, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 71

source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the permitting authority elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related record-keeping and reporting requirements.* (i) Each permit shall contain the following requirements with respect to monitoring:

(A) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including part 64 of this chapter and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record-keeping 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