

AGENCY OF NATURAL RESOURCES

Waterbury, Vermont

ENVIRONMENTAL PROTECTION REGULATIONS

CHAPTER 5

AIR POLLUTION CONTROL

Subchapter I. Definitions\*

5-101 AS USED IN THIS PART, ALL TERMS NOT DEFINED HEREIN SHALL HAVE THE MEANING GIVEN THEM IN THE ACT

"Act" refers to the Air Pollution Control Act, 10 V.S.A. Section 551 et seq., as amended.

"Action Level" means a rate of *emissions* of a *hazardous air contaminant* as specified in Appendix C or as may be determined under Section 5-261(3) of these regulations. *Action Levels* are used to determine the applicability of Section 5-261 to *stationary sources* and shall be derived in accordance with the method prescribed in Appendix E of these regulations.

"Actual Emissions" means the rate of *emissions*, as of a particular date, which equals the average rate at which a source actually emitted the contaminant during the preceding two-year period. The *Secretary* may allow the use of a different time period upon a determination that it is more representative of normal source operation. For any source which has not begun normal operations on the particular date, *actual emissions* shall equal the *allowable emissions* of the source on that date.

"Adverse Impact on Visibility" means *visibility impairment* which, as determined on a case-by-case basis by the *Air Pollution Control Officer*, interferes with the management, protection, preservation or enjoyment of a *person's* visual experience when visiting any *sensitive area* or any *Class I Federal area*. Any such determination will take into account the geographic extent, intensity, duration, frequency and time of *visibility impairment* and how these factors correlate with (1) times of visitor use and (2) the frequency and timing of natural conditions that reduce visibility.

"Agency" means the Agency of Natural Resources.

"Air Contaminant" means dust, fumes, mist, *smoke*, other *particulate matter*, vapor, gas, odorous substances, or any combination thereof.

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"*Air Pollution*" means the presence in the outdoor atmosphere of one or more *air contaminants* in such quantities, and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, or property. Such effects may result from direct exposure to *air contaminants*, from deposition of *air contaminants* to other environmental media, or from alterations caused by *air contaminants* to the physical or chemical properties of the atmosphere.

"*Air Pollution Control Officer*" means the *person* whose functional responsibility is to direct and coordinate the *air pollution* control activities and program for the State.

"*Air Pollution Control Regulations*" means Chapter V of the Vermont Environmental Protection Regulations.

"*Air Quality Impact Evaluation*" means an analysis of the degree to which *emissions* from stationary or *motor vehicles* contribute to *air contaminant* concentrations in the *ambient air*. Such analysis shall include air quality modeling or other methods determined by the *Secretary* to be reliable.

"*Allowable Emissions*" means the *emission* rate calculated using the maximum rated capacity of the source and, if applicable, either:

- (a) The applicable *emission* standard contained in these regulations, if any, or
- (b) The *emission* rate or design, operational or equipment standard specified in any order or agreement issued under these regulations that is state and federally enforceable.

"*Ambient Air*" means that portion of the atmosphere, external to buildings, to which the general public has access.

"*Ambient Air Quality Standards*" means any standard which establishes the largest allowable concentration of a specific *air contaminant* in the *ambient air* space as specified in Subchapter III of these regulations.

"*Applicant*" means a *person* who seeks the approval of the *Secretary*, as required by Section 5-501, prior to the construction, installation or *modification* of a *stationary* source.

"*ASTM*" means the American Society for Testing and Materials.

"*Attainment Area*" (see definition of *nonattainment area*).

\* NOTE: All terms defined within these regulations are printed in italics wherever they appear. Terms which are used in all subchapters of the regulations are defined in Section 5-101, while supplemental definitions intended for use with a specific section of the regulations are found within that section.

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"*Brake Horsepower*" means the maximum continuous brake horsepower output rating for an engine as specified by the manufacturer.

"*Bulk Gasoline Plant*" means a *gasoline* storage and distribution facility with an average daily throughput of 20,000 gallons (76,000 liters) of *gasoline* or less on a 30-day rolling average.

"*Bulk Gasoline Terminal*" means a *gasoline* storage facility which receives *gasoline* from refineries and delivers *gasoline* to *bulk gasoline plants* or to commercial or retail accounts; and has a daily throughput of more than 20,000 gallons (76,000 liters) of *gasoline* on a 30-day rolling average.

"*CFR*" means the Code of Federal Regulations.

"*Capture Efficiency*" means the weight per unit time of *VOC* entering a *capture system* and delivered to a control device divided by the weight per unit time of total *VOC* generated by a source of *VOC*, expressed as a percentage.

"*Capture System*" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an *air contaminant* to a *control device*.

"*Class I Federal Area*" means any area identified in 40 *CFR* 81, Subpart D.

"*Coating*" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, inks, maskants, and temporary protective coatings.

"*Coating Unit*" means a series of one or more *coating* applicators and any associated drying area and/or oven wherein a *coating* is applied dried and/or cured. A *coating unit* ends at the point where the *coating* is dried or cured, or prior to any subsequent application of a different *coating*. It is not necessary to have an oven or a flashoff area in order to be included in this definition.

"*Combustion Contaminants*" are *air contaminants* discharged into the atmosphere from the burning of any kind of material containing carbon in a free or combined state.

"*Combustion Efficiency (C.E.)*" means a measure of the completeness of combustion, determined by the measurement of the proportion by volume of carbon dioxide (CO<sub>2</sub>) and carbon monoxide (CO) in *flue gas* (on a dry basis)

$$\text{where; } C.E. (\%) = \frac{CO_2}{CO_2 + CO} \times 100$$

"*Commence Operation*" means to begin using, on a full time basis, any equipment in a manner that represents normal operational procedures.

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"Control Device" means equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of *air contaminants* in an air stream prior to discharge to the *ambient air*.

"Crematory" means an *incinerator* used solely to reduce the volume and weight of human and animal remains, limited amounts of associated surgical wastes including but not limited to disposable sharps, gloves, gowns and dressings, and associated combustible waste containers which have been approved by the *Air Pollution Control Officer*.

"Emergency use engine" means an engine used only for emergency purposes and up to 100 hours per year for routine testing and maintenance. Emergency purposes are limited to periods of time when: (1) the usual source of power, heat or lighting is temporarily unavailable due to reasons beyond the reasonable control of the *owner/operator*; (2) the Independent System Operator has determined a power capacity deficiency exists and has implemented a voltage reduction of five (5) percent or more of normal operating voltage; or (3) a fire or flood make it necessary to pump water to minimize property damage.

"Emission" means a release of *air contaminants* into the *ambient air* space.

"Emission Reduction Credit" or "ERC" means the certified quantity of an *emission* reduction from a source that may be stored or used as described in Section 5-502.

"EPA" means the federal Environmental Protection Agency, the Administrator of the Environmental Protection Agency, or the Administrator's designee.

"Equivalent Method" means any method of sampling and/or analyzing for an *air contaminant* which has been demonstrated to the *Air Pollution Control Officer's* satisfaction to have a consistent and quantitatively known relationship to a reference method under specific conditions.

"Federal Land Manager" means the *Secretary* of the department with authority over a *Class I Federal area* or his or her representative.

"Federally Enforceable" means all limitations and conditions which are enforceable by the U.S. Environmental Protection Agency, whether contained in federal regulations, a state implementation plan, or construction or operating permits.

"Flashoff Area" means the space between the *coating* application area and the *oven*.

"Flue Gas" means *air contaminants* which enter the *ambient air* through a flue or *stack*.

"Forest Land Area" means at least 25 acres of land that is at least 10% stocked with trees of any size.

"Fossil Fuel" means coal, coke, distillate oil, residual oil, and natural gas.

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"Fuel" means any form of combustible matter--solid, liquid or gas, including combustible refuse.

"Fuel-Burning Equipment" means any individual furnace, boiler, and/or apparatus used in the process of burning fuel for the primary purpose of producing heat or power.

"Fuel Oil" means a liquid or liquefiable petroleum product either virgin or rerefined which is burned for the generation of heat or power and derived, whether in whole or in part, from crude oil.

"Fugitive emissions" means air contaminant(s) emitted into the ambient air from points other than a stack. For purposes of determining the applicability of Subchapter V and Subchapter X of the Air Pollution Control Regulations, "fugitive emissions" shall include only those emissions which are reasonably quantifiable.

"Fugitive Particulate Matter" means any particulate matter generated by a process operation which is emitted into the ambient air space from points other than a stack.

"Garbage" -- waste resulting from distribution, preparation and serving of food.

"Gaseous Matter" means any material that exists in the gaseous state at standard conditions.

"Gasoline" means any petroleum distillate having a Reid vapor pressure of four pounds per square inch (27.6 kilopascals) or greater.

"Gasoline Dispensing Facility" means any site where gasoline is transferred from a stationary storage tank to a motor vehicle gasoline tank used to provide fuel to the engine of that motor vehicle.

"Gasoline Tank Truck" means a delivery tank truck with a capacity of 4000 gallons or greater used at bulk gasoline plants, bulk gasoline terminals or gasoline dispensing facilities that is loading or unloading gasoline.

"Greenhouse Gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other chemical or physical substance emitted into the air that the Secretary may reasonably anticipate to cause or contribute to climate change.

"Hazardous Air Contaminant" means an air contaminant which in the judgment of the Secretary, taking into account its quantity, concentration or physical, chemical or infectious characteristics, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness.

"Hazardous Air Pollutant (HAP)" means any air pollutant listed in or pursuant to section 112(b) of the federal Clean Air Act.

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"*Hazardous Ambient Air Standard (HAAS)*" means the highest acceptable concentration in the *ambient air* of a *hazardous air contaminant* as specified in Appendix C or as may be determined under Section 5-261(6) of these regulations. All *HAAS's* shall be derived in accordance with the methods prescribed in Appendix D of these regulations.

"*Hazardous Most Stringent Emission Rate (HMSEER)*" means a rate of *emissions*, including a visible *emissions* standard, which the *Secretary*, on a case-by-case basis, determines is achievable for a *stationary source* based on the lowest *emission* rate achieved in practice by such category of source. If a source demonstrates that due to economic impacts and costs, it cannot achieve the lowest *emission* rate achieved in practice by such source category, *HMSEER* shall be the lowest *emission* rate which the *Secretary* determines said source is capable of achieving, *HMSEER* may be achieved through application of pollution control equipment, production processes or techniques, equipment design, work practices, chemical substitution, or innovative pollution control techniques. In no event shall application of *HMSEER* permit a *stationary source* to emit any contaminants in excess of any Federal *emission* standard or any *emission* standard in these regulations.

"*Hearing Officer*" means an employee or representative of the *Agency* appointed by the *Secretary* to hear any or all matters in any case properly before the *Secretary* under Subchapter VI of these regulations.

"*Heat Input*" shall be the aggregate heat content of all *fuels* introduced into any *fuel burning equipment*. For the purposes of review of the construction or installation of an *air contaminant* source, the *heat input* value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

"*Horsepower (H.P.)*" is a unit that is equal to 10 square feet of boiler heating surface.

"*Implementation Plan for the Protection of Visibility in Vermont*" means the plan with that name developed for the purpose of meeting the requirements contained in Section 169A of the Clean Air Act (42 USC 7401 et seq.).

"*Incinerator*" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of an unwanted material.

"*Leak Free*" means no more than 3 drops per minute of product is leaked.

"*Loading Rack*" means an aggregation or combination of *gasoline* loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

"*Major Modification*" means any *modification* of a *major stationary source* that would result in a *significant* increase in *actual emissions* of any *air contaminant*.

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"Major Source of HAPs" means any stationary source that has allowable emissions, in the aggregate, of 10 tons per year or more of any single HAP, 25 tons per year or more of any combination of HAPs, or such lesser quantity that EPA may establish by rule.

"Major Stationary Source" means any stationary source or modification whose allowable emissions of any air contaminant, except for lead and greenhouse gases, are equal to or greater than 50 tons per year. For the air contaminant lead, "major stationary source" means any stationary source or modification whose allowable emissions of lead are equal to or greater than five tons per year. For the air contaminant that is greenhouse gases, "major stationary source" means any stationary source or modification whose allowable emissions of total greenhouse gases are: (1) on a mass basis, equal to or greater than the thresholds in 40 C.F.R. § 51.166(b)(1)(i), and (2) on a carbon dioxide equivalent (CO<sub>2</sub>e) basis, subject to regulation at that stationary source or modification.

"Material safety data sheet (MSDS)" means the documentation required for hazardous chemicals by the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910) for a solvent, cleaning material, contact adhesive, coating, or other material that identifies select reportable hazardous ingredients of the material, safety and health considerations, and handling procedures.

"Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the actual emission rate of any air contaminant, regardless of any emission reductions achieved at the source. A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair and replacement; or
- (b) An increase in the hours of operation or in the production rate, unless such change is prohibited under any condition of a permit issued pursuant to these Regulations.

"Most Stringent Emission Rate (MSER)" a rate of emissions which the Secretary, on a case-by-case basis, determines is achievable for a source based on the lowest emission rate achieved in practice by such category of source, unless the source demonstrates it cannot achieve such a rate due to economic impacts and costs. Costs of achievement of MSER will be accorded less weight for sources or modifications locating in non-attainment areas than for sources or modifications locating in attainment areas for the applicable air contaminant. In no event shall application of MSER result in emissions of any contaminants in excess of any Federal emission standard or any emission standard contained in these regulations. If the Secretary determines that imposition of an emission standard is infeasible, a design, equipment, work practice or operational standard, or combination thereof, may be prescribed instead as constituting MSER.

"Motor Vehicle" shall include all vehicles propelled or drawn by power other than muscular power, except tractors used entirely for work on the farm, vehicles running only on stationary rails or tracks, motorized highway

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building equipment, road making appliances or snowmobiles, or implements of husbandry.

"*Multiple Chamber Incinerator*" means any article, machine, equipment, contrivance, structure, or part of a structure used to dispose of combustible refuse by burning, consisting of three or more refractory lined combustion furnaces in series, physically separated by refractory walls interconnected by gas passage ports or ducts and employing adequate design parameters necessary for maximum combustion of the material to be burned.

"*Natural Wood*" -- for the purposes of these regulations, *natural wood* means trees, including logs, boles, trunks, branches, limbs, and stumps, lumber including timber, logs or slabs, especially when dressed for use. This definition shall also include pallets which are used for the shipment of various materials so long as such pallets are not chemically treated with any preservative, paint, or oil. This definition shall not extend to other wood products such as sawdust, plywood, particle board and press board.

"*Nonattainment Area*" means, for any *air contaminant*, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the *Secretary* to be reliable) to exceed any applicable *ambient air quality standard* for such contaminant. "*Attainment Area*" means all other areas, except those areas for which there is not sufficient data to allow classification ("unclassified areas").

"*Odor*" means that property of gaseous, liquid, or solid materials that elicits a physiologic response by the human sense of smell.

"*Opacity*" means the degree to which *emissions* reduce the transmission of light and obscure the view of any object in the background.

"*Open Burning*" -- the burning of any type of combustible material in the open where the products of combustion are emitted directly into the *ambient air* space without passing through a *stack*, chimney, or other enclosure. Burning shall include ignition, permitting or causing ignition and suffering, allowing or maintaining burning.

"*Oven*" means a chamber which is used to bake, cure, polymerize, and/or dry a *coating*.

"*Overall Emission Reduction Efficiency*" means the weight per unit time of *VOC* removed or destroyed by a *control device* divided by the weight per unit time of *VOC* generated by a source, expressed as a percentage. The *overall emission reduction efficiency* can also be calculated as the product of the *capture efficiency* and the *control device* destruction or removal efficiency.

"*Owner/operator*" means the owner(s), operator(s), lessor(s), lessee(s) and/or supervisor(s) of an *air contaminant* source and/or a *person* authorized to represent such *person(s)*.

"*PM<sub>10</sub>*" means *particulate matter* with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method specified in Title 40 *CFR* Part 50, Appendix J and in accordance with Title 40 *CFR* Part

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53, or an equivalent method designated in accordance with Title 40 CFR Part 53.

"*Particulate Matter*" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid at *standard conditions*.

"*Party*" means any *person* named or admitted as a *party* under the Act or Subchapter VI of these regulations, or properly seeking and entitled as of right to be admitted as a *party* thereunder.

"*Pathological Waste*" -- human and animal remains consisting of carcasses, organs and solid organic waste.

"*Permanent*", in reference to *emission* reductions, means that the *emission* reduction is assured for the life of the corresponding *emission* increase. The permanence of the subject reduction shall be guaranteed through an enforceable permit limitation confirming the amount and duration of the decrease, or other enforceable mechanism (e.g., *permanently* dismantling and removing the *emissions* source, surrendering the permit, etc).

"*Person*" means an individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity, including a joint venture or affiliated ownership. The word "*person*" also means any subdivision, agency, or instrumentality of the State of Vermont, of any other state, of the United States, or of any interstate body.

"*Prevention of Significant Deterioration (PSD)*" means the protection of the public health and welfare from any actual or potential adverse effect which in the *Secretary's* judgment may reasonably be anticipated to occur from *air pollution* which would deteriorate air quality in any portion of the State where existing air quality is better than the *ambient air quality standards*.

"*Process Unit*" refers to a unique and/or distinct part of the total process, where raw or partially processed materials undergo a chemical or physical change which generates *air contaminants*. Within any *process unit* when any material undergoes a series of operations which are capable of emitting *particulate matter* and which employ any combination of machines, equipment, or other devices used for processing the material either continuously or in batches, the total *process weight* for the series of operations shall be the weight of materials introduced to the series as a whole. Any material which is the product of any operation in the series shall not be counted as part of the *process weight* for any other operation in the series.

"*Process Weight*" means the total weight of all materials introduced into any *process unit* which may cause discharge into the *ambient air* space of *particulate matter*. Solid fuels charged will be considered as part of the *process weight*, but liquid and gaseous *fuels* and combustion air will not. "THE PROCESS WEIGHT PER HOUR" will be derived by dividing the total *process weight* by the number of hours in a complete operation from beginning of any given process to the completion thereof, excluding any time during which the equipment is idle.

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"*Quantifiable*", in reference to *emission* reductions, means that the amount, rate and characteristics of the *emission* reduction can be determined through an accurate and reliable method (e.g., through *emissions* tests, continuous *emissions* monitoring, material balance, etc.).

"*Reasonable Progress Toward the Remediating of Existing Man-made Visibility Impairment in a Sensitive Area*" means achieving and maintaining a statewide average *emission* rate of less than or equal to 1.2 pounds of sulfur dioxide released per million British thermal units of *heat input* for the category of sources including all *fuel-burning equipment* with a rated *heat input* greater than or equal to 100 million British thermal units per hour, by no later than 1995 as described in the *Implementation Plan for the Protection of Visibility in Vermont*.

"*Reasonably Available Control Technology*" means devices, systems, process modifications, or other apparatus or techniques designed to prevent or control *emissions* that are reasonably available, taking into account the social, environmental and economic impact of such controls, and alternative means of *emission* control.

"*Reciprocating Internal Combustion Engine*" means any spark ignited or compression ignited engine in which power, produced by heat and/or pressure in the engine cylinder(s) through the burning of a mixture of air and fuel, is subsequently converted to mechanical work by means of one or more pistons.

"*Reconstructed Source*" means a source wherein the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source. A *reconstructed source* will be treated as a new source for the purposes of these regulations.

"*Refuse*" -- *garbage, rubbish, and mixed municipal wastes*.

"*Reid Vapor Pressure*" means the absolute vapor pressure of a liquid or solid petroleum product at 100°F (37.8°C) in pounds per square inch (kilopascals).

"*Rerefined Oil*" means any *waste oil* which has been processed in such a manner as to make it substantially equivalent, in the judgement of the *Air Pollution Control Officer*, to virgin oil with regard to the *emissions* caused when it is used as a *fuel*.

"*Respondent*" means any adverse *party* in a case or enforcement action under these regulations.

"*Ringelmann Chart*" -- the chart published and described in U.S. Bureau of Mines Information Circular 8333 (May 1967) and on which are illustrated graduated shades of grey for use in estimating the light obscuring capacity of *smoke*.

"*Rubbish*" -- solids or liquids not considered to be highly flammable or explosive, such as, but not limited to, paper, rags, ashes, leaves, tree branches, yard trimmings, furniture, tin cans, glass, crockery, demolition wastes, junk automobiles, tires, automotive parts and other similar materials.

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"*Schedule of compliance*" means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to timely compliance with applicable requirements related to the control of *air contaminant emissions* or the prevention or control of *air pollution*.

"*Secretary*" means the Secretary of the Agency of Natural Resources or such person as the *Secretary* may designate.

"*Sensitive Area*" means for the purpose of these regulations, any portion of the area comprising Lye Brook Wilderness Area and all other terrain in Vermont at or above the elevation of 2500 feet above mean sea level.

"*Significant*" means, in reference to a *modification's* increase in *actual emissions* or a source's *allowable emissions* of any of the following *air contaminants*, a rate of *emissions* that would equal or exceed any of the following rates:

	<b>Tons Per Year</b>
Carbon monoxide	50
Nitrogen oxides	40
Sulfur dioxide	40
<i>Particulate matter</i>	25
<i>PM<sub>10</sub></i>	15
<i>Volatile organic compounds(VOC)</i>	40
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1
Vinyl chloride	1
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide (H <sub>2</sub> S)	10
Total reduced sulfur (including H <sub>2</sub> S)	10
Reduced sulfur compounds (including H <sub>2</sub> S)	10
<i>Greenhouse gases</i>	*

\*For *greenhouse gases*, "*significant*" means a rate of *emissions* for total *greenhouse gases*, on a carbon dioxide equivalent (CO<sub>2</sub>e) basis, that (1) is *subject to regulation* at that source or *modification*, and (2) would equal or exceed the significance level established by EPA.

"*Smoke*" means the visible aerosol, resulting from incomplete combustion, which contains fly ash and/or other *combustion contaminants*, excluding condensed water vapor.

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"*Stack*" means any chimney, flue, conduit, or duct arranged to conduct emissions to the ambient air.

"*Standard Conditions*" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of Hg.

"*State Enforceable*" means all limitations and conditions which are enforceable by the Agency by means of state regulations, construction or operating permits, administrative orders, assurances of discontinuance, court orders, or contracts.

"*Stationary Reciprocating Internal Combustion Engine*" means a *reciprocating internal combustion engine* that remains at a *stationary source* for more than twelve consecutive months or a shorter period of time for a *reciprocating internal combustion engine* located at a seasonal source. A *reciprocating internal combustion engine* located at a seasonal source is an engine that remains or will remain at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a *stationary source* that remains or will remain at a single location on a permanent basis (i.e., at least two years) and that operates at the location for three months or more each year.

"*Stationary Source*" means any structure(s), building(s), facility(ies), equipment, installation(s), or operation(s) (or combination thereof) which emits or may emit any *air contaminant*, which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or persons under common control). The phrase "emits or may emit any *air contaminant*" as used in this definition applies to both *fugitive emissions* and stack emissions.

"*Stationary Source Hazardous Air Impact Standard*" means a concentration in the *ambient air* of a *hazardous air contaminant* attributable to the air quality impacts of a *stationary source*, in conjunction with the air quality impacts from other *stationary sources* as determined in accordance with the Agency's air quality impact evaluation guidelines (revised November 20, 1992). *Stationary source hazardous impact standards* are specified in Appendix C or may be determined under Section 5-261(6) of these regulations.

"*Subject To Regulation*" means subject to regulation as defined by EPA at 40 C.F.R. § 51.166(48)(b) and any references therein to "major stationary source" shall be interpreted as defined in 40 C.F.R. § 51.166(b)(1)(i) rather than as defined in this section 5-101 of these regulations.

"*Submerged Fill*" means the method of filling a *gasoline tank truck* or storage tank in which *gasoline* enters within six inches of the bottom of the tank. Bottom filling of *gasoline tank trucks* and storage tanks is included in this definition.

"*Surplus*", in reference to *emission reductions*, means *emission reductions* that are voluntarily created by a source and are not required by any state or federal laws or regulations or related permits, orders or agreements and are not relied upon for Agency planning purposes.

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"Ton" means "short ton" or 2000 pounds.

"Total Organic Halogens" means the total organic halides (fluorine, chlorine, bromine, iodine) expressed as organic chloride present in a waste fuel, in parts per million by weight (water free basis).

"Total Suspended Particulate (TSP)" means *particulate matter* as measured by the reference method specified in Title 40 CFR Part 50, Appendix B.

"True Vapor Pressure" means the absolute pressure in pounds per square inch (kilopascals) of a pure vapor in equilibrium with its pure liquid or solid form at a given temperature.

"Vapor Balance System" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and a receiving tank such that vapors displaced from the receiving tank are transferred to the tank being unloaded.

"Vapor Collection System" means all piping, seals, hoses, connections, pressure vacuum vents and other equipment between the *gasoline tank truck* and the vapor processing unit and/or the storage tanks and vapor holder.

"Vapor Control System" means a system that limits or prevents release to the atmosphere of organic compounds in the vapors displaced from a tank during the transfer of *gasoline*.

"Vapor Recovery System" means a vapor gathering system capable of collecting *volatile organic compound* vapors and gases emitted during the operation of any transfer, storage or process equipment.

"Vapor-Tight" means equipment that allows no loss of vapors. Compliance with *vapor-tight* requirements can be determined by checking to ensure that the concentration at a potential leak source is not equal to or greater than 100 percent of the lower explosive limit (LEL) when measured with a combustible gas detector, calibrated with propane, at a distance of 1 inch (2.54 cm) from the source.

"Vapor-Tight Gasoline Tank Truck" means a *gasoline tank truck* with a product delivery tank that sustains a pressure change of not more than 3.0 inches (75 mm) of water within 5 minutes after it is pressurized to 18 inches (450 mm) of water; or when evacuated to 5.9 inches (150 mm) of water, the same tank will sustain a pressure change of not more than 3.0 inches (75 mm) of water within 5 minutes. This capacity shall be demonstrated by annual testing using the procedures specified in Method 27 of 40 CFR Part 60, Appendix A.

"Visibility Impairment" means any humanly perceptible change in visual range, contrast, or coloration from that which would have existed under natural visibility conditions.

"Volatile Organic Compound (VOC)" means any organic compound (i.e., chemical compound of carbon) that participates in atmospheric photochemical reactions. This includes any organic compound other than those determined by the

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Administrator of the U.S. Environmental Protection Agency to have no or negligible photochemical reactivity.

"*Waste Oil*" means any petroleum product which:

- (a) has been refined from crude oil, directly or indirectly, in whole or in part, and
- (b) has been used and not rerefined, or is unfit for its intended use as a result of contamination by chemical or physical impurities.

"*Wood Fuel*" for the purposes of these regulations means *natural wood*, as well as, sawdust or other wood waste generated by wood processing operations.

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Subchapter II. Prohibitions

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**5-251 CONTROL OF NITROGEN OXIDES EMISSIONS**

- (1) No *person* shall discharge, or cause, allow or permit *emissions* of oxides of nitrogen, expressed as NO<sub>x</sub>, from any steam generating *fuel burning equipment* with a *heat input* capacity of 250 million BTU's per hour or more in excess of:
- (a) 0.36 grams per million calories *heat input* (0.20 pounds per million BTU) derived from gaseous *fossil fuel*.
  - (b) 0.54 grams per million calories *heat input* (0.30 pounds per million BTU) derived from liquid *fossil fuel*.
  - (c) 1.26 grams per million calories *heat input* (0.70 pounds per million BTU) derived from solid *fossil fuel* (except lignite or a *fossil fuel* containing 25 percent by weight, or more of coal refuse).
- (2) *Reasonably available control technology* for large stationary sources.
- (a) The owner or operator of any *stationary source* that has *allowable emissions* of one hundred (100) tons per year or more of nitrogen oxides shall install, maintain and use *reasonably available control technology*, approved by the *Secretary*, to limit the discharge of nitrogen oxides from the source by commencement of operation.
  - (b) Any source that becomes or is currently subject to the provisions of this subsection by exceeding the applicability threshold in paragraph (2)(a) of this subsection shall remain subject to these provisions even if its *emissions* later fall below the applicability threshold.
  - (c) Exemptions. Any NO<sub>x</sub> *emission unit* required to meet the *most stringent emission rate (MSER)* in a construction permit containing specific *emission limits* is exempt from the requirements of Section 5-251(2).

**5-252 CONTROL OF SULFUR DIOXIDE EMISSIONS**

No *person* shall discharge, or cause, allow or permit *emissions* of sulfur dioxide from any steam generating *fuel burning equipment* with a *heat input* capacity of 250 million BTU's per hour or more in excess of:

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- (a) 1.4 grams per million calories *heat input* (0.80 pounds per million BTU) derived from liquid *fossil fuel*.
- (b) 2.2 grams per million calories *heat input* (1.2 pounds per million BTU) derived from solid *fossil fuel*.

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**5-271 CONTROL OF AIR CONTAMINANTS FROM STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES**

- (a) Applicability.
  - (1) For all stationary reciprocating internal combustion engines, excluding *emergency use engines*, with a brake horsepower output rating of 450 bhp or greater installed prior to July 1, 1999, the Tier 1 standards specified in subsection (b) of this section shall become effective beginning July 1, 2007.
  - (2) For all stationary reciprocating internal combustion engines, including *emergency use engines*, with a brake horsepower output rating of 450 bhp or greater installed on or after July 1, 1999 and prior to July 1, 2007, the Tier 1 standards specified in subsection (b) of this section shall apply upon installation.
  - (3) For all stationary reciprocating internal combustion engines, including *emergency use engines*, with a brake horsepower output rating of 450 bhp or greater installed on or after July 1, 2007, the Tier 2 standards specified in subsection (c) of this section shall apply upon installation.
- (b) Tier 1 Standards for *Stationary Reciprocating Internal Combustion Engines* Combusting Liquid or Gaseous *Fossil Fuel*.
  - (1) A *person* shall not discharge, cause, allow, or permit the *emission* of oxides of nitrogen from any *stationary reciprocating internal combustion engine* subject to this subsection in excess of 6.9 grams per *brake horsepower* hour.
  - (2) A *person* shall not discharge, cause, allow, or permit the *emission* of carbon monoxide from any *stationary reciprocating internal combustion engine* subject to this subsection in excess of 8.5 grams per *brake horsepower* hour.

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- (3) A person shall not discharge, cause, allow, or permit the emission of particulate matter from any stationary reciprocating internal combustion engine subject to this subsection in excess of 0.40 grams per brake horsepower hour.
- (c) Tier 2 Standards for *Stationary Reciprocating Internal Combustion Engines* Combusting Liquid or Gaseous Fossil Fuel.
  - (1) A person shall not discharge, cause, allow, or permit the emission of oxides of nitrogen from any stationary reciprocating internal combustion engine subject to this subsection in excess of 4.8 grams per brake horsepower hour.
  - (2) A person shall not discharge, cause, allow, or permit the emission of carbon monoxide from any stationary reciprocating internal combustion engine subject to this subsection in excess of 2.6 grams per brake horsepower hour.
  - (3) A person shall not discharge, cause, allow, or permit the emission of particulate matter from any stationary reciprocating internal combustion engine subject to this subsection in excess of 0.15 grams per brake horsepower hour.
- (d) Test Methods for *Stationary Reciprocating Internal Combustion Engines* Combusting Liquid or Gaseous Fossil Fuel.
  - (1) Compliance with the emission standards specified in subsections (b) and (c) of this section shall be determined either by demonstrating the engine has met the engine certification requirements of Title 40 of the Code of Federal Regulations Part 89 or by using test procedures set forth by the *Air Pollution Control Officer* at rated load and speed of the stationary reciprocating internal combustion engine.

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**Subchapter IV. Operations and Procedures**

**5-401 CLASSIFICATION OF AIR CONTAMINANT SOURCES**

The following source or sources engaged in the following operations, processes or activities are classified as *air contaminant* sources which may cause or contribute to *air pollution*.

- (1) *Incinerators*
- (2) Hot-mix asphalt plants
- (3) Electrical power generation facilities
- (4) Wood products industries
- (5) Mineral product industries, including mining, quarrying and crushing operations
- (6) *Fuel* burning installations:
  - (a) Fossil fuel burning equipment as specified below:
    - (i) For *fuel-burning equipment* which solely burns gaseous fuels, individual units of 10 million BTU per hour rated heat input or greater;
    - (ii) For *fuel-burning equipment* which burns *fuel oil*, individual units of 3 million BTU per hour rated *heat input* or greater which aggregate to 10 million BTU per hour or greater;
    - (iii) For *fuel-burning equipment* which burns anthracite coal, individual units of 5 million BTU per hour rated *heat input* or greater; and
    - (iv) Any *fuel-burning equipment* which burns bituminous coal.
  - (b) *Wood fuel burning equipment* of greater than 90 H.P. rated output;
  - (c) *Stationary reciprocating internal combustion engines* using any *fuel* type and having a rating of 450 *brake horsepower* output or greater, except that *emergency use engines* shall not be classified as air contaminant sources for purposes of Section 5-501 of these regulations.
- (7) Metal melting and reclamation furnaces
- (8) Metal fabrication processes
- (9) Surface finishing and *coating* operations, including application of paints, lacquers, solvents and related materials
- (10) Petroleum or petro-chemical processing or marketing

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- (11) Manufacturing, processing and application of chemicals, including the processing or application of plastics, rubbers or resins
- (12) Operations involving the handling or transferring of sand or dust producing materials
- (13) Kraft pulping processes
- (14) Leather tanning and finishing operations
- (15) Animal byproduct processes
- (16) Any source not listed above, including sources of *greenhouse gases* that are *subject to regulation*, which would otherwise be subject to permitting requirements pursuant to the Clean Air Act, as amended (42 USC 7401, et seq.).
- (17) Such other sources as may be designated as *air contaminant* sources by the *Air Pollution Control Officer* on a case-by-case basis.

**5-402 WRITTEN REPORTS WHEN REQUESTED**

The *Air Pollution Control Officer* may at any time require written reports from the *person* operating or responsible for any proposed or existing *air contaminant* source, which reports shall contain information concerning location, siting, size and height of contaminant outlets, processes employed, pertinent process and material flow, *fuels* used, nature and amount and time periods or durations of *emissions* and such other information as may be relevant to the *air pollution* potential of the source. These reports shall also include the results of such source testing as may be required under Section 5-404 herein.

**5-403 CIRCUMVENTION**

No *person* shall build, erect, install or use any article, machine, equipment or other contrivances, the use of which, without resulting in a reduction in the total release of *air contaminants* to the atmosphere, reduces or conceals an *emission* which otherwise would constitute a violation of these regulations.

**5-404 METHODS FOR SAMPLING AND TESTING OF SOURCES**

- (1) Whenever the *Air Pollution Control Officer* has reason to believe that the *emission* limits of these regulations are being violated by a source, he or she may require the owner or operator of said source to conduct tests to determine the quantity of *particulate* and/or *gaseous matter* being emitted, which tests shall include *stack* tests if circumstances so demand. In the event that *stack* testing is required,

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the tests shall be performed in accordance with procedures specified in 40 *CFR* 60, Appendix A, or other methods approved by the *Air Pollution Control Officer*. Testing to determine the quantity of *particulate matter emissions* from cyclones shall be performed by using the high volume sampling method, or an *equivalent method* approved by the *Air Pollution Control Officer*.

- (2) Should the *Air Pollution Control Officer* wish to conduct tests of his or her own to determine compliance with the *emission limits* of these regulations, the owner or operator of the source to be tested shall provide at no expense to the state of Vermont, reasonable and necessary openings in *stacks*, vents and ducts, along with safe and easy access thereto, including a suitable power source to the point of testing.
- (3) The *Air Pollution Control Officer* shall be supplied with such data as he or she may require to establish test conditions.
- (4) The method, or any conditions associated with the method, of source testing required under this section shall be approved by the *Air Pollution Control Officer*.

**5-405 REQUIRED AIR MONITORING**

- (1) The *Air Pollution Control Officer* may require the owner or operator of any *air contaminant source* to install, use and maintain such monitoring equipment and records, establish and maintain such records, and make such periodic *emission reports* as the Officer shall prescribe.
- (2) The method, or any conditions associated with the method, of air monitoring required under this section shall be approved by the *Air Pollution Control Officer*.

**5-406 REQUIRED AIR MODELING**

- (1) The *Air Pollution Control Officer* may require the owner or operator of any proposed *air contaminant source* subject to review pursuant to Sections 5-501 or 5-503 herein to conduct diffusion or other air quality modeling and to submit an *air quality impact evaluation* to demonstrate that operation of the proposed source as described to the *Air Pollution Control Officer* will not directly or indirectly result in a violation of any *ambient air quality standard*, interfere with the attainment of any *ambient air quality standard*, or violate any applicable *prevention of significant deterioration increment* (Table 2).
- (2) For proposed *stationary sources*, the appropriate air quality modeling techniques shall be determined on a case-by-case basis in accordance with procedures established by the *Air Pollution Control Officer*.

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**Subchapter V. Review of New Air Contaminant Sources**

**5-501 REVIEW OF CONSTRUCTION OR MODIFICATION OF AIR CONTAMINANT SOURCES**

- (1) No *person* shall cause, suffer, allow or permit the new construction, installation or *modification* of any *stationary source* classified as an *air contaminant* source under Section 5-401 herein, unless he or she first submits a complete application to and obtains a permit from the Secretary.
- (2) A complete application shall contain such plans, specifications, and other information as the Secretary deems necessary in order to determine whether the proposed construction, installation or *modification* will comply with these regulations and Vermont statutes at Title 10, chapter 23. Other information may include analyses of the impact on any Class I area, including visibility and any other air quality related value specified by the *Federal Land Manager*, and comments, if any, from the *Federal Land Manager*.
- (3) The *Secretary* may require an applicant to submit any additional information the *Secretary* considers necessary to make a determination that the application is complete and shall not grant a permit until such information is furnished and evaluated.
- (4) The *Secretary* shall issue a permit if the *Secretary* determines that the proposed construction, installation, or *modification* of an *air contaminant* source will be in compliance with all requirements of these regulations and Vermont statutes at Title 10, chapter 23. If the *Secretary* determines that the proposed construction, installation or *modification* will not be in compliance with all requirements of these regulations and Vermont statutes at Title 10, chapter 23, the *Secretary* shall deny the permit and shall notify the applicant in writing of the reasons for the denial.
- (5) If *allowable emission* increases of any *air contaminant* from a source subject to this section will cause or contribute to a violation of any *ambient air quality standard* or cause or contribute to a violation of any applicable *prevention of significant deterioration* increment (Table 2), or will impact on any *Class I area*, such source shall achieve *MSER* with respect to any such contaminant and will be treated as a *major stationary source* or a *major modification* for the purposes of its review under these regulations. With regard to a *modification* of a source, the *allowable emission* increases mean the difference between the source's *actual emissions* before the *modification* and its *allowable emissions* after the *modification*.
- (6) Within 30 days of receipt of an application for a *major stationary source*, *major modification*, or other source in the discretion of the *Secretary* that may affect a Class I area, the *Secretary* shall notify

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the *Federal Land Manager*. Such notice shall be provided at least sixty (60) days before holding a public informational meeting.

- (7) Upon making a determination to issue a draft permit under this section for a major stationary source, major modification, or other source in the discretion of the Secretary, opportunity for public participation shall be provided as follows:
- (a) The *Secretary* shall give notice to the general public either by publishing a notice in a newspaper having general circulation in the area affected by the *subject* source or in an electronic state publication designed to give notice to the public.
  - (b) The content of the notice shall identify:
    - (i) The name and address of the *air contaminant source* and the *owner/operator*;
    - (ii) The name and address of the *Secretary* or his/her pertinent designee;
    - (iii) A brief description of the construction, installation, or *modification* proposed by the application, the preliminary determination, and, if applicable, the degree of increment consumption that is expected;
    - (iv) The name, mailing address, email address, and telephone number of a *person* from whom interested *persons* may obtain additional information, including the completed application form, the draft construction permit, the *Agency's* analysis, comments or analyses submitted by a *Federal Land Manager* of the effect of the construction or *modification* on the *ambient air* quality, and all other materials available to the *Secretary* which are relevant to the construction permit application.
    - (v) A brief description of the comment procedures required by this section; and
    - (vi) The time and place of any public informational meeting that may be held or a statement of procedures to request such a meeting.
  - (c) If required by 40 C.F.R. § 51.166(q)(2)(iv), the Secretary will send a copy of the notice to the applicant, EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur.
  - (d) Following the notice specified in paragraph (a) of this subsection, the public comment period on a draft construction

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permit shall be at least thirty (30) days for a *major stationary source, major modification, or other source* in the discretion of the Secretary.

- (e) The *Secretary* will provide opportunity for a public informational meeting regarding the draft construction permit if requested in writing prior to the close of the public comment period. The *Secretary* shall provide timely notice by advertisement in a newspaper having general circulation in the area affected by the *subject source* or in an electronic state publication designed to give notice to the public.
- (f) The *Secretary* will keep a record of the commenters and also of the issues raised during the public comment period and the public informational meeting, if conducted, take into consideration such comments, and make all comments available for public inspection in the same location that the application, draft permit, and other materials relevant to the construction permit application are made available.
- (g) At his or her discretion, the *Secretary* may hold any public comment period or public informational meeting pursuant to this section jointly and concurrently with any public comment period or public informational meeting pursuant to §5-1007 of the *Air Pollution Control Regulations*.
- (8)
  - (a) Upon making a determination to issue a draft permit under this section for an *air contaminant source* that has *allowable emissions* of more than 10 tons per year of all contaminants, excluding *greenhouse gases*, and is not a *major stationary source* or *major modification*, opportunity for public participation shall be provided as set forth in Section 5-501(7) of this subchapter, except that the public comment period on a draft construction permit shall be at least ten (10) days.
  - (b) Regarding applications for the construction, installation or *modification* of any *air contaminant source* that has *allowable emissions* of less than ten tons per year of all contaminants, excluding *greenhouse gases*, opportunity for public participation may be provided at the discretion of the *Secretary*. In determining whether to provide for such public participation, the *Secretary* shall consider the degree of toxicity of the *air contaminant* and the emission rate, the proximity of the *air contaminant source* to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the source. If the *Secretary* requires such an opportunity for public participation, it will be in such manner as determined in the discretion of the *Secretary*.
- (9) Nothing in this section or no action taken under this section shall be construed as relieving any *person* from compliance with any *emission standard* prescribed in these regulations or with any other provision of law.

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**5-502 MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS**

(1) Applicability

(a) This section applies to all *major stationary sources* and *major modifications* which are constructed subsequent to July 1, 1979 and are subject to review under Section 5-501 herein.

(b) Where a source is constructed or modified in increments:

(i) Which individually are not subject to review under this section,

(ii) Which have not previously been aggregated for purposes of their review under this section, and

(iii) Which are not a part of a program of construction or *modification* in planned incremental phases previously approved by the *Secretary*.

All such increments shall be added together for determining the applicability of this section.

(2) Prohibition

No *person* shall initiate construction of any *major stationary source* or *major modification* until the applicable requirements of this section have been complied with and a permit approving construction has been issued in accordance with Section 5-501 herein.

(3) *Most Stringent Emission Rate*

(a) (i) Each *major stationary source* shall apply control technology adequate to achieve the *most stringent emission rate* with respect to those *air contaminants* for which it would have *significant allowable emissions*.

(ii) Each *major modification* shall apply control technology adequate to achieve the *most stringent emission rate* with respect to any *air contaminant* for which there would be a *significant* increase in *actual emissions* at the source, but only for those proposed physical or operational changes which would contribute to increased *emissions* of the *air contaminant*.

(b) Any source or *modification* subject to this section shall submit information at the time it applies for approval to construct to establish that the *most stringent emission rate* will be achieved.

(4) *Air Quality Impact Evaluation*

(a) A source or *modification* subject to this section with respect to any *air contaminant* other than *volatile organic compounds* or

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*greenhouse gases*, shall submit to the *Secretary* an *air quality impact evaluation* at the time it applies for approval to construct under Section 5-501 herein.

- (b) The evaluation shall demonstrate that the increase in *allowable emissions* will not cause violations of any applicable *ambient air quality standard* in any area, and will not significantly contribute to a violation of any applicable *ambient air quality standard* in a *nonattainment area* for the above *air contaminants*. A source or *modification* will be considered to significantly contribute to a violation of any *ambient air quality standard* for the above *air contaminants* if the increase in the *allowable emissions* from the source or *modification* will cause any increase in ambient concentrations of the above *air contaminants* in the *nonattainment area* in excess of any of the levels of significant impact shown in Table 3 herein. If a source or *modification* will significantly contribute to such a violation, the evaluation shall demonstrate that the source or *modification* will comply with the requirements of paragraph (6) herein.
  - (c) The evaluation shall demonstrate that, as of the source's or *modification's* start-up date, the increase in *allowable emissions*, in conjunction with all other applicable *emissions* increases or reductions, will not cause or contribute to any increase in ambient concentrations exceeding the remaining available *prevention of significant deterioration (PSD)* increment for the specified *air contaminants*, as determined by the *Secretary*. A demonstration under this paragraph is not required if a source is modified, but there is no net increase in the source's *allowable emissions* of the *air contaminants* specified in Table 2.
  - (d) The evaluation shall demonstrate that the increase in *allowable emissions* will not cause an *adverse impact on visibility* in any *sensitive area* or in any *Class I Federal area* and will not interfere with *reasonable progress toward the remedying of existing man-made visibility impairment in a sensitive area*. Said demonstration shall be submitted to the *Agency* and the appropriate *Federal Land Manager* at least 60 days prior to the close of the public comment period on the source or *modification*.
  - (e) Any *air quality impact evaluation* or modeling required by this section shall be prepared in accordance with procedures acceptable to the *Secretary* and with Section 5-406 of these regulations. The evaluation shall exclude the effect of that portion of the height of any *stack* which exceeds good engineering practice and the effect of any other dispersion technique.
- (5) Increment Allocation
- (a) The evaluation required in paragraph (4)(c) above shall demonstrate that the increase in *allowable emissions* thereunder will not consume more than 25% of the remaining annual *PSD*

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increment, nor more than 75% of the remaining 24 hour PSD increment for the specified *air contaminants*.

- (b) The remaining available PSD increment, in either case, shall be determined by the *Secretary*.
- (c) Once a source has demonstrated that it will comply with paragraph (5)(a) above, the appropriate portions of the PSD increments shall be allocated in accordance with procedures established by the *Secretary*, which may provide for local or regional participation.

(6) *Emission Reductions*

- (a) The *Secretary* shall not issue a permit approving construction of any source or *modification* subject to this section if the source or *modification* is unable to demonstrate, as required under Paragraph (4), that the increase in *allowable emissions* from it will not significantly contribute to a violation of any applicable *ambient air quality standard* unless, prior to issuance of any such permit:

- (i) The source *owner or operator* secures legally binding offsetting *emission* reductions, not otherwise to be utilized as part of the State's attainment strategies, of the *air contaminant* contributing to such a violation from existing sources located in or impacting on the same area (whether or not under the same ownership) such as to provide a net *emission* reduction acceptable to the *Secretary*, and

- (ii) The source *owner or operator* certifies that all existing sources of the source owner located in the State are in compliance with all applicable rules or are meeting all steps of any compliance schedules contained in any administrative orders or court decrees.

- (b) Regardless of whether a source or *modification* is subject to the requirements of paragraph (6)(a) of this section, the *Secretary* shall not issue a permit approving construction of any source or *modification* of nitrogen oxides or *volatile organic compounds* (VOCs) subject to this section and meeting the federal definition of major stationary source or major modification contained in 40 CFR Part 51.165 as applicable to the Ozone Transport Region unless, prior to issuance of such permit, the *owner or operator* of said source shall:

- (i) Secure legally binding offsetting *emission* reductions (not otherwise required by law) of nitrogen oxides or VOCs, as applicable, from existing sources;

- (ii) Obtain an offset ratio of a minimum of 1.15:1; and

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- (iii) Certify that all existing sources of the source owner located in the state are subject to *emissions* limitations and are in compliance, or on an enforceable schedule for compliance with all applicable *emissions* limitations and standards.
  - (c) Only *emission* reductions that meet the following criteria shall be eligible for use as offsetting *emission* reductions under Section 5-502(6):
    - (i) Except for ozone precursors, *emission* reductions of a contaminant may only be used to offset *emissions* of the same contaminant. *Emission* reductions of *particulate matter* may only be used to offset *emissions* of equally or less hazardous forms of *particulate matter*. For the purpose of offsetting ozone precursors, *emission* reductions for nitrogen oxides or *VOCs* can be used to offset *emissions* of each other if approved by the Secretary and EPA on a case-by-case basis;
    - (ii) *Emission* reductions must have occurred after January 1, 1990, or within ten years previous to the date of any application under this section in which the reduction is proposed to be used, whichever is more recent; and
    - (iii) The *emissions* reductions must be *emission reductions credits* pursuant to subsection 5-502(7) or *ERCs* generated in another state where a reciprocal trading agreement has been established between Vermont and such other state.
- (7) *Emission Reduction Credits*
- (a) The owner or operator of a source at which a reduction in *emissions* of nitrogen oxides or *VOCs* has occurred may apply to the Secretary for certification of the reduction as an *emission reduction credit* (ERC). Ten percent of all *actual emission* reductions identified by the owner or operator for certification will revert to the Agency for its use as it sees fit. Once certified by the Secretary, an *ERC* may be used to offset increased *emissions* from new or modified sources or for other purposes approved by the Secretary.
  - (b) Only *emission* reductions that meet the following eligibility criteria shall be certified as *ERC's*:
    - (i) *Emission* reductions may be created by shutdown, curtailment, or over control of *emissions* beyond an applicable limit, or any other reduction method acceptable to the Secretary.
    - (ii) *Emission* reductions shall be real, surplus, quantifiable, permanent, and state and federally enforceable.

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- (iii) *Emissions* from sources which have been issued permits but never operated, or which have engaged in normal operations for less than one (1) year, shall not be used as offsetting *emission* reductions.
    - (iv) *Emission* reductions may be certified as *ERC's* only after the reductions have actually occurred.
  - (c) An application for certification shall be submitted within 18 months after the *emission* reduction occurs.
  - (d) In order to confirm *emission* reductions claimed in conjunction with an application for *ERC* certification, the *Secretary* may require the submission of production, *fuel* use or other records or *emissions* testing or the use of continuous *emissions* monitoring or other appropriate means of measurement. The same or an *equivalent method* of measurement shall be used to quantify *emissions* both before and after the reduction.
  - (e) Where a reciprocal trading agreement has been established between Vermont and another state, *ERCs* generated in Vermont may be used in such other state.
- (8) *Ambient Air Quality Monitoring*
  - (a) A *major stationary source* or *major modification* required to submit an *air quality impact evaluation* shall include in such evaluation an analysis of *ambient air* monitoring data for any *attainment areas* impacted by each of the following *air contaminants*;
    - (i) For the source, each contaminant for which it would have significant allowable emissions;
    - (ii) For the modification, each contaminant for which it would result in a significant increase in actual emissions.
  - (b) Ambient monitoring data shall be based on sampling conducted for a time period of up to one year immediately preceding submission of any application for approval to construct such a source or *modification*. Ambient monitoring data collected for a time period of less than one year or for a time period other than immediately preceding submission of any such application may be acceptable if such data is adequate for determining whether the *source* or *modification* will cause a violation of any applicable *ambient air quality standard* or consume more than the remaining available *PSD* increment.
  - (c) Subparagraphs (a) and (b) above shall not apply to any *air contaminant* for which no *ambient air quality standard* has been adopted.

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5-503 REPEALED

**5-504 PERMIT FEES**

(1) Applicability

- (a) Except as provided in 3 V.S.A. § 2822(i) and 32 V.S.A. § 710, any *person* who is required to obtain a permit from the *Secretary* under Section 5-501 prior to construction, installation or *modification* of a *stationary source* shall submit permit fee(s) in accordance with this section. Additionally, where a request is made to amend an existing permit or the *Secretary* proposes to amend an existing permit on his or her own motion, permit fee(s) shall be submitted in accordance with this section.

(2) Base Permit Fee

- (a) A base permit fee shall be submitted with each application for and each request to amend a permit required by Section 5-501(1) of this subchapter.
- (b) The base permit fee shall be determined in accordance with the base fee schedule in 3 V.S.A. §2822(j).
- (c) The *Secretary* shall not make a completeness determination under section 5-501 of this subchapter until the base permit fee is paid in full.
- (d) The entire base permit fee shall be nonrefundable.

(3) Supplementary Fee

- (a) The *Secretary* shall assess supplementary fee(s) for each *stationary source* that is not a *major stationary source*.
- (b) Supplementary fee(s) shall be determined in accordance with the supplementary fee schedule in 3 V.S.A. §2822(j).
- (c) The *Secretary* shall not issue a permit or grant a permit amendment until all supplementary fees are paid in full.
- (d) Once the *Secretary* makes a completeness determination under Section 5-501 of this subchapter, the entire amount of any assessed supplementary fees submitted before or after such determination shall be nonrefundable.

**5-505 FALSE OR MISLEADING INFORMATION**

All data, plans, specifications, analyses and other information submitted or caused to be submitted to the *Agency* shall be complete and truthful. Any such submission which is false or misleading shall be sufficient grounds for the denial of a permit, and may result in a fine and/or imprisonment under the authority of Vermont statutes.

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**Subchapter X. Operating Permits**

**5-1001 PURPOSE AND AUTHORITY**

The regulations in this Subchapter X are promulgated with the intention of providing for the establishment of a comprehensive statewide air quality operating permit program consistent with the federal Clean Air Act (42 U.S.C. § 7401, et seq.), and Vermont statutes at Title 10, chapter 23.

**5-1002 DEFINITIONS**

The terms defined in this section shall apply to this subchapter only, and for purposes of this subchapter shall supersede definitions contained in any other regulation or in statutes. The definitions contained in Air Pollution Control Regulations §5-101 shall govern in the absence of a superseding definition in this section.

"*Administrative operating permit amendment*" is a permit revision that:

- (1) Corrects typographical errors;
- (2) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides for a similar minor administrative change at the *subject source*;
- (3) Requires more frequent monitoring or reporting by the permittee; or,
- (4) Allows for a change in ownership or operational control of a *subject source* where the *Secretary* 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 *Secretary*.

"*Administratively complete application*" means a good faith submission to the *Secretary* of all information required by the *Secretary* for *operating permit applications*.

"*Affected States*" means the states contiguous to Vermont, those being New York, New Hampshire and Massachusetts and those States:

- (1) Whose air quality may be affected by an *operating permit*, *operating permit amendment*, or *operating permit renewal* that is being proposed; or,
- (2) That are within fifty (50) miles of the *stationary source* which is the subject of an *operating permit application*.

"*Applicable requirement*" means all of the following as they apply to *subject sources* including requirements that have been promulgated or approved by *EPA* or the *Agency* through rulemaking including those which have future-effective compliance dates:

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- (1) Any term or condition of any construction or *modification* permits issued pursuant to 10 V.S.A. § 556 or the regulations promulgated thereunder which is pertinent to the continuing operations of the *subject source*;
- (2) Any standard or other requirement regarding standards of performance for new *stationary sources* pursuant to section 111 of the federal Clean Air Act and/or regarding hazardous air pollutants pursuant to section 112 of the federal Clean Air Act [42 U.S.C. §§ 7411, 7412];
- (3) Any standard or other requirement of the acid rain program under title IV of the federal Clean Air Act [42 U.S.C. §§ 7651-7651o] or the regulations promulgated thereunder;
- (4) Any requirements regarding monitoring or compliance certification pursuant to section 504(b) or section 114(a)(3) of the federal Clean Air Act [42 U.S.C. §§ 7661c(b), 7414(a)(3)];
- (5) Any standard or other requirement governing solid waste incineration pursuant to section 129 of the federal Clean Air Act [42 U.S.C. § 7429];
- (6) Any standard or other requirement pursuant to section 183 of the federal Clean Air Act [42 U.S.C. § 7511b];
- (7) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the federal Clean Air Act, unless the *EPA* has determined that such requirements need not be contained in an *operating permit* to be in compliance with the federal Clean Air Act. [42 U.S.C. §§ 7671-7671q];
- (8) Any standard or requirement contained in an applicable implementation plan approved and/or promulgated pursuant to the federal Clean Air Act [42 U.S.C. § 7401, et seq.];
- (9) Any standard or other requirement under the *Air Pollution Control Regulations*; and,
- (10) Any standard or other requirement of 10 V.S.A. § 556a and 3 V.S.A. § 2822.

"*Draft operating permit*" means the version of a permit for which the *Secretary* offers public participation under section 5-1007 of this subchapter.

"*Emissions allowable under the permit*" means a permit term or condition that establishes an emissions limit (including a work practice standard.)

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"*Final operating permit*" means the version of an *operating permit* issued by the *Secretary* after the applicant has successfully completed all review procedures required by this subchapter.

"*Insignificant Activities*" means any of the following:

- (1) Any of the following activities, if the activity supports one or more production processes of the facility and does not itself constitute a facility production process or a part thereof:
  - (i) Natural gas, propane, and distillate oil space heating/hot water heaters rated at less than 3.0 million British Thermal Units (BTUs) per hour;
  - (ii) Automotive storage garages and automotive repair shops that perform no autobody repair activities;
  - (iii) Construction activities excluding fugitive dust;
  - (iv) Internal combustion engine generator sets rated less than 37 kW (50 hp).
  - (v) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis excluding research and development facilities.
  - (vi) *Emergency use engines*.
  - (vii) Interior maintenance activities and the equipment and supplies used therein, such as janitorial cleaning products. This subparagraph does not include cleaning of production equipment and products.
  - (viii) Any other activity determined to be insignificant by the *Secretary* on the basis of the minimal quantity of emissions and impracticality with respect to quantifying emissions provided such determination is consistent with the federal Clean Air Act [42 U.S.C. § 7401, et seq.], the Vermont Air Pollution Control Act [10 V.S.A. § 551, et seq., as amended] and the regulations promulgated thereunder.
- (2) The engine of any *motor vehicle* including, but not limited to, any forklift or tractor.

"*Minor permit amendment*" means an *operating permit amendment* for a change to a subject source or operating permit which:

- (1) Does not require or alter an *MSER*, *HMSER*, or source specific *RACT emission* limitation;
- (2) Does not involve the construction or modification of a stationary source where the proposed construction or modification itself

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will have allowable emissions of ten tons per year or more of all contaminants;

- (3) Does not subject the source to a federal requirement under section 111 or 112 of the federal Clean Air Act
- (4) Does not subject the source to Title V of the federal Clean Air Act [42 U.S.C. §§ 7661-7661f];
- (5) Does not violate an underlying applicable requirement;
- (6) Does not involve significant changes to existing monitoring, reporting, or record keeping;
- (7) Does not alter or establish an emissions cap for which there is no underlying applicable requirement;
- (8) Does not require a significant permit modification; and,
- (9) Cannot be accomplished under the Operational Flexibility provisions (§ 5-1014) of this subchapter.

"*Operating permit*" means any permit covering a *subject source* that is issued, renewed, amended, modified, or revised pursuant to this subchapter.

"*Operating permit amendment*" means a revision to an *operating permit*.

"*Operating permit application*" means an application for an initial *operating permit*, an *operating permit* renewal, or an *operating permit amendment*.

"*Proposed operating permit*" means the version of an *operating permit*, developed by the *Secretary* after the close of the public comment period, that the *Secretary* proposes to issue and forwards to the *EPA* for review in accordance with section 5-1008(b) of this subchapter.

"*Responsible official*" means one of the following:

- (1) For a corporation:
  - (i) 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,
  - (ii) 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 an *operating permit* or subject to this subchapter and the *Secretary* is notified in writing and approves of the delegation of authority to such representative.

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- (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or,
- (3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this subchapter, 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.

"Subchapter X major source" means any *stationary source*, which, regardless of whether the emissions are fugitive or emitted via stack(s), has *allowable emissions* of all *air contaminants* in the aggregate of ten (10) or more tons per year excluding *greenhouse gas* emissions and emissions resulting from *insignificant activities*.

"Subject source" means any *stationary source* subject to the permitting requirements of this subchapter.

"Title IV affected source" means a *stationary source* which is subject to emission reduction requirements or limitations under Title IV of the federal Clean Air Act [42 U.S.C. §§ 7651-7651o].

"Title V subject source" means any *stationary source* subject to the permitting requirements of Title V of the federal Clean Air Act [42 U.S.C. §§ 7661-7661f] and the regulations promulgated thereunder.

**5-1003 APPLICABILITY**

- (a) Any *owner/operator* of an *air contaminant* source listed in Air Pollution Control Regulations section 5-401(1)-(17) is subject to the requirement to secure an *operating permit* under this subchapter if the *stationary source* is:
  - (1) A Subchapter X major source;
  - (2) A *Title V subject source*;
  - (3) A Title IV affected source;
  - (4) A stationary source subject to Air Pollution Control Regulation § 5-261, at the discretion of the Secretary, upon determining that the toxicity and quantity of hazardous air contaminants emitted may adversely affect susceptible populations; or,
- (b) Any *owner/operator* of a *stationary source* category that the *Secretary*, in his/her discretion, exempts by declaratory ruling, so long as such exemption is consistent with Vermont statutes at Title 10, chapter 23 and with the federal Clean Air Act, as amended [42 U.S.C. § 7401, et seq.], and the regulations promulgated thereunder, is not subject to

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the requirement to secure an *operating permit* regarding such *stationary source* under this subchapter.

**5-1004 DUTY TO APPLY**

For each *subject source*, the *owner/operator* shall submit a timely and *administratively complete application* and all other information required by the *Secretary* in accordance with this subchapter.

**5-1005 TIMELY APPLICATIONS**

- (a) A *subject source* applying for an *operating permit* for the first time must submit an *administratively complete application* within twelve (12) months after the *subject source* becomes subject to the provisions of this subchapter.
- (b) The *owner/operator* of a *subject source* that is required to meet the requirements under section 112(g) of the federal Clean Air Act [42 U.S.C. § 7412(g)] or to have a permit under Subchapter V of the *Air Pollution Control Regulations* shall file an *administratively complete operating permit application* within the later of twelve (12) months after the effective date of this subchapter or twelve (12) months after commencing operation. Where an existing *operating permit* would prohibit such construction or change in operation, the *owner/operator* must obtain an *operating permit amendment* before commencing operation. Notwithstanding the preceding two sentences, the *Secretary* may, at his/her discretion, consolidate the application and/or permit for construction or *modification* of a *stationary source* with the application and permit for operation of the *stationary source*.
- (c) For purposes of *operating permit* renewal, a timely application is one that is submitted twelve (12) months prior to the date of *operating permit* expiration.
- (d) Applications for initial phase II acid rain permits shall be submitted to the *Secretary* by January 1, 1996 for sulphur dioxide, and by January 1, 1998 for nitrogen oxides.
- (e) No *subject source* may operate after the date by which the *owner/operator* is required to submit a timely and *administratively complete application* in accordance with this section, except in compliance with an *operating permit* issued in accordance with this subchapter. Notwithstanding the preceding sentence, if an *owner/operator* submits a timely and *administratively complete application*, the *owner/operator's* failure to have an *operating permit* is not a violation of this subchapter until the *Secretary* takes final action on the application. This protection shall cease to apply if, subsequent to the application being determined or deemed *administratively complete* pursuant to section 5-1006 of this subchapter, the *owner/operator* fails to submit any additional information required by the *Secretary* as well as information pertaining to changes to the *subject source* within thirty (30) days or such other period specified in writing by the *Secretary*.

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**5-1006 COMPLETE APPLICATION**

- (a) Unless and until the information specified in subsection (e) of this section is provided, an *operating permit application* will not be determined administratively complete, except that applications for *operating permit amendment(s)* need supply such information only if it is related to the proposed change(s).
- (b) Unless the *Secretary* determines that an *operating permit application* is not administratively complete, such an application will automatically be deemed administratively complete at the later of sixty (60) days after receipt of the application or sixty (60) days after receipt of information responsive to the *Secretary's* last request for additional information regarding the application.
- (c) If, while processing an *operating permit application* that has been determined or deemed administratively complete, the *Secretary* determines that additional information is necessary to evaluate or take final action on that application, the *owner/operator* shall submit such information in writing within thirty (30) days of notification by the *Secretary* that such information is necessary or within such other period specified in writing by the *Secretary* as reasonably necessary to provide such information.
- (d) Any *owner/operator* who fails to submit any relevant facts or who has submitted incorrect information in an *operating permit application* shall, upon becoming aware of such failure or incorrect submittal, within five (5) working days or within such other period specified in writing by the *Secretary* as reasonably necessary to provide such information, submit such supplementary facts or corrected information. In addition, an *owner/operator* shall provide additional information as necessary to address any requirements that become applicable to the subject source after the date it files an *administratively complete application* but prior to release of a *draft operating permit*.
- (e) The *owner/operator* shall complete the forms provided by the *Secretary* for *operating permit applications*. Information as described below for each *process unit* and each *fuel burning equipment unit* at a *subject source* shall be included in the application:
  - (1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, name of other *responsible officials*, and telephone numbers and names of *subject source site contact person(s)*;
  - (2) A description of the subject source's processes and products (including Standard Industrial Classification Code) including any associated with each alternative operating scenario identified by the owner/operator;
  - (3) The following *emission-related* information:

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- (i) All *emissions* of *air contaminants* unless resulting from *insignificant activities* or exempted under this subchapter. The *owner/operator* shall provide additional information, as determined by the *Secretary* to be necessary, related to the *emissions* of *air contaminants* to verify which requirements are applicable to the *subject source*;
  - (ii) Identification and description of all points of air contaminant emissions;
  - (iii) Allowable *emission* rates in tons per year, and any other unit determined by the *Secretary* to be necessary to establish compliance consistent with the applicable standard reference test method;
  - (iv) The following information as determined by the *Secretary* to be necessary 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) Identification and description of all *insignificant activities* as defined in this Subchapter;
  - (vii) A proposed enhanced monitoring protocol if required under section 114(a)(3) of the federal Clean Air Act [42 U.S.C. 7414(a)(3)] or the regulations promulgated thereunder;
  - (viii) Limitations on *subject source* operations affecting *emissions* or any work practice standards, where applicable, for all *air contaminants* at a *subject source*;
  - (ix) Research and development activities and such activities' *emission* amounts;
  - (x) Other information relating to any *applicable requirement*; and,
  - (xi) All calculations, data, assumptions and conclusions on which the information in items (i) through (x) of this paragraph, above, are 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*;

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- (5) Other specific information that may be necessary to implement and enforce other *applicable requirements* of this subchapter or to determine the applicability of any such requirement;
- (6) An explanation of any proposed exemptions from otherwise *applicable requirements*;
- (7) Additional information necessary to define reasonably anticipated alternative operating scenarios or as needed by the *Secretary* to determine the applicability of any other provision of this subchapter;
- (8) A compliance plan for all *subject sources* that contains the following:
  - (i) A description of the compliance status of the subject source with respect to all applicable requirements;
  - (ii) A description as follows:
    - (A) For *applicable requirements* with which the *subject source* is in compliance, a statement that the *subject source* will continue to comply with such requirements;
    - (B) For *applicable requirements* that will become effective during the permit term, a statement that the *subject source* will meet such requirements on a timely basis; and,
    - (C) For *applicable requirements* for which the *subject source* is not in compliance at the time of application for an *operating permit*, a narrative description of how the *owner/operator* will achieve compliance with such requirements;
  - (iii) A schedule of compliance as follows:
    - (A) For *applicable requirements* with which the *subject source* is in compliance, a statement that the *subject source* will continue to comply with such requirements;
    - (B) For *applicable requirements* that will become effective during the *operating permit* term, a statement that the *subject source* will meet such requirements on a timely basis. A statement that the *subject source* will meet in a timely manner *applicable requirements* that become effective during the *operating permit* term shall satisfy this provision, unless a more detailed schedule is

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expressly required by the *applicable requirement*;  
and,

- (C) A *schedule of compliance* for *subject sources* that are not in compliance with all *applicable requirements* at the time of application for an *operating permit*. 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 *subject source* will be in noncompliance at the time of application for an *operating permit*. Such compliance schedule shall be at least as stringent as that contained in any judicial consent decree or administrative order to which the *subject source* is subject; and,
  - (iv) A schedule for submission of certified progress reports no less frequently than every six (6) months for an *owner/operator* required to have a *schedule of compliance* to remedy a violation.
- (9) Requirements for compliance certification, including the following:
- (i) A certification of compliance with all *applicable requirements* by a *responsible official* consistent with subsection (f) of this section and with section 114(a)(3) of the federal Clean Air Act [42 U.S.C. § 7414(a)(3)];
  - (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 *operating permit* term, to be submitted no less frequently than annually, or more frequently if specified by the underlying *applicable requirement* or by the *Secretary*;
  - (iv) A statement indicating the *subject source's* compliance status with any applicable enhanced monitoring and compliance certification requirements of the federal Clean Air Act; and,
- (10) Analysis for each *hazardous air contaminant* subject to Section 5-261 of the *Air Pollution Control Regulations* that shall include:
- (i) The proposed *Hazardous Most Stringent Emission Rate (HMSER)* emission limit for each *hazardous air contaminant emission* from a *subject source* and all calculations, data, assumptions and conclusions supporting the proposed *HMSER* emission limit;

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- (ii) An *air quality impact evaluation* if required or a demonstration of compliance with any other requirement of Section 5-261 of the *Air Pollution Control Regulations*; and
  - (iii) Any other *applicable requirement* under Section 112 of the federal Clean Air Act.
- (f) Any application form, report, or compliance certification submitted pursuant to this subchapter shall contain certification of truth, accuracy, and completeness signed by a *responsible official*. This certification and any other certification required under this subchapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

**5-1007 PUBLIC PARTICIPATION**

- (a) Upon making a determination to issue a *draft operating permit* for a *Subchapter X major source* or a *Title V subject source*, opportunity for public participation shall be provided as follows:
- (1) The *Secretary* shall give notice:
    - (i) To the general public either by publishing a notice in a newspaper having general circulation in the area affected by the *subject source* or in an electronic state publication designed to give notice to the public; and
    - (ii) To *affected states for Title V subject sources*.
  - (2) The content of the notice shall identify:
    - (i) The name and address of the *subject source* and the *owner/operator*;
    - (ii) The name and address of the *Secretary* or his/her pertinent designee;
    - (iii) A brief description of the activity(ies) proposed by the *operating permit application*;
    - (iv) The *emissions* change proposed in any application for an *operating permit amendment*;
    - (v) The name, mailing address, email address and telephone number of a *person* from whom interested *persons* may obtain additional information, including the completed application form, the *draft operating permit*, the Agency's analysis and all other materials available to the *Secretary* that are relevant to the operating permit application; (vi) A brief description of the comment procedures required by this section; and,

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- (vii) The time and place of any public informational meeting that may be held or a statement of procedures to request such a meeting.
- (3) Following the notice specified in paragraph (1) of this subsection (a), the public comment period on a draft permit shall be at least thirty (30) days for a *Title V subject source* and shall otherwise be at least ten (10) days for a *Subchapter X major source*.
- (4) The *Secretary* will provide opportunity for a public informational meeting regarding the *draft operating permit* if requested in writing prior to the close of the public comment period, or, in the case of a permit renewal that is not subject to the public notice and comment requirements pursuant to subsection (c) of this section, if requested in writing prior to renewal. Notice shall be given at least thirty (30) days in advance of any such meeting for a *Title V subject source* and shall be given at least fourteen (14) days in advance of any such meeting for a *Subchapter X major source*.
- (5) The *Secretary* will keep a record of the commenters and also of the issues raised during the public comment period and the public informational meeting, if conducted.
- (b) For *operating permit applications* for all *subject sources* which are neither a *Subchapter X major source* nor *Title V subject source* and for applications for all *administrative* and *minor permit amendments* pursuant to Section 5-1013(a) and (b) of this subchapter, opportunity for public participation may be provided at the discretion of the *Secretary*. In determining whether to provide for such public participation, the *Secretary* shall consider the degree of toxicity of the *air contaminant* and the emission rate, the proximity of the *subject source* to residences, population centers and other sensitive human receptors, and emission dispersion characteristics at or near the *subject source*. If the *Secretary* requires such an opportunity for public participation, it will be in such manner as determined in the discretion of the *Secretary*.
- (c) Applications for *operating permit* renewal are subject to the same public participation requirements that apply to initial *operating permit applications*, except that a permit being renewed shall not be subject to the public notice and comment requirements of subsection (a) of this section if:
  - (1) The *Secretary* determines that no substantive changes have occurred at the *subject source* that would affect emissions or require changes to the permit;
  - (2) The *Secretary* determines no new statutory or regulatory requirements need to be added to the permit; and

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- (3) The *subject source* is not a *Title V subject source*.
- (d) At his/her discretion, the *Secretary* may hold any public comment period or public informational meeting pursuant to this section jointly and concurrently with any public comment period or public informational meeting pursuant to §5-501 of the *Air Pollution Control Regulations*.

**5-1008 SECRETARY'S POWERS AND DUTIES**

- (a) The *Secretary* may refuse to issue, renew, amend or modify an *operating permit* upon any of the following grounds:
  - (1) The *owner/operator* fails to submit pertinent and material information requested by the *Secretary*;
  - (2) There exists at the *subject source* unresolved noncompliance with *applicable requirements* or conditions of an existing permit issued under this Chapter and the *owner/operator* will not undertake a *schedule of compliance* that is acceptable to the *Secretary* to resolve the noncompliance;
  - (3) An *owner/operator* fails to fully disclose all facts relevant to the *subject source*, or knowingly submits false or misleading information to the *Secretary*; or,
  - (4) With respect to a *subject source* proposed to be permitted, the *owner/operator* has failed to pay a penalty or other sums owed pursuant to, or has otherwise failed to comply with, a court order, consent decree, stipulation agreement, *schedule of compliance*, or an order issued under Vermont statutes.
- (b) For *Title V subject sources*, the *Secretary* will forward the *operating permit application*, *proposed operating permit*, and the legal and factual basis for proposed *operating permit* conditions to *EPA* for review. Within the later of forty five (45) days of its receipt of the *proposed operating permit* or forty-five (45) days of its receipt of Vermont's notice relating to nonacceptance of *Affected State* comments, *EPA* may object to the issuance of a *final operating permit* if it determines that the issuance of a *final operating permit* will not comply with the requirements of 40 C.F.R. Part 70. This subsection (b) shall not apply to applications for *administrative operating permit amendments*.
- (c) Within ninety (90) days of the date of an *EPA* objection to a *proposed operating permit*, the *Secretary* will respond in writing to the objection, revise the *proposed operating permit* if necessary, and either issue or deny a *final operating permit* in accordance with *EPA's* objection. For *Title V subject sources*, the *Secretary* shall provide copies of issued *operating permits*, including amended *operating permits*, to *EPA*.

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- (d) The *Secretary* may issue an *operating permit* to a *subject source* which is not in compliance with *applicable requirements*. Such permit will include an appropriate *schedule of compliance* which is acceptable to the *Secretary*.
- (e) (1) For *Title V subject sources*, the *Secretary* shall reopen an *operating permit* and, then, shall reissue, amend, suspend or terminate, as appropriate, the permit when:
- (i) There are additional *applicable requirements* with a remaining *operating permit* term of 3 or more years, and shall complete the reopening within eighteen months of the promulgation of the requirement;
  - (ii) There are additional *applicable requirements* for a *Title IV affected source* under the acid rain program;
  - (iii) The *Secretary* or *EPA* determines that the permit contains a material mistake or that inaccurate information was used to establish emissions standards or other terms or conditions of the permit; or
  - (iv) The *Secretary* or *EPA* determines such action is necessary to assure compliance with *applicable requirements*.
- (2) For any *subject source*, the *Secretary* may reopen and, then, reissue, amend, suspend or terminate an *operating permit* for good cause. Good cause includes, but is not limited to, situations where:
- (i) there are additional applicable requirements;
  - (ii) the permit contains a material mistake or that inaccurate information was used to establish emissions standards or other terms or conditions of the permit;
  - (iii) the subject source has failed to comply with a permit condition; or
  - (iv) the grounds for refusal to issue, renew or modify an *operating permit* under subsection (a) of this section exist.
- (3) In the event the *Secretary* reopens a permit pursuant to paragraph (e)(1) or (e)(2) of this subsection, the procedures required for initial *operating permit application* and issuance or permit amendments shall apply, except that they shall apply only to those parts of the *operating permit* for which cause to reopen exists. Except in an emergency, the *Secretary* shall provide at least thirty (30) days notice to the *owner/operator*, of the *Secretary's* intent to reopen. Such procedures need not be followed for suspension, termination, or revocation of a permit.

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- (f) The *Secretary* may issue a single permit authorizing *emissions* from similar operations by the same *owner/operator* at multiple temporary locations. The operations must be temporary and involve at least one change of location during the term of the permit. Such permits shall require at least ten (10) days notice to the *Secretary* prior to each change in location.
- (g) The *Secretary* shall implement the requirements and provisions of Title IV of the federal Clean Air Act [42 U.S.C. §§ 7651-7651o] and the regulations promulgated thereunder. If any provisions or requirements of Title IV of the federal Clean Air Act and the regulations promulgated thereunder conflict with or are not included in this Subchapter, the requirements and provisions of Title IV of the federal Clean Air Act shall apply and take precedence.

**5-1009 ACTION ON OPERATING PERMIT APPLICATIONS**

- (a) An initial *operating permit*, an *operating permit* renewal, or an *operating permit amendment* will be issued only if all of the following conditions have been met:
  - (1) The *Secretary* has received an *administratively complete application* as described in Section 5-1006 of this subchapter;
  - (2) The *owner/operator* has provided all additional information requested by the *Secretary* pursuant to Sections 5-1005(e), 5-1006(c), 5-1006(d), and 5-1012(c) of this subchapter;
  - (3) An opportunity for public participation, if required by Section 5-1007 of this subchapter, is provided; and,
  - (4) The terms and conditions of the *operating permit*, including any *schedule of compliance*, provide for compliance with all *applicable requirements* and the requirements of this subchapter.
- (b) The *Secretary* will take final action on each *operating permit application* within eighteen (18) months after receiving an *administratively complete application*.

**5-1010 REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)**

- (a) The *owner/operator* of a *Subchapter X major source* shall install, maintain, and use *reasonably available control technology (RACT)* to limit the discharge of *air contaminants* from each *process unit* and each *fuel burning equipment unit* at such *subject source*, if and as required by the conditions of an *operating permit*.
- (b) Except as provided in subsection (c) of this section, any *RACT* requirement pursuant to subsection (a) of this section shall be determined by the *Secretary* for each *subject source* or category of *subject sources* after consideration of all available pertinent information. Before final action is taken on an *operating permit application*, the *Secretary* may require the *owner/operator* of a

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*stationary source* subject to this section to submit information to the *Secretary* to establish whether *RACT* will be achieved.

- (c) Any *RACT* requirement for *VOCs* pursuant to Section 5-253 of this Chapter or nitrogen oxides pursuant to Section 5-251(3), or any *most stringent emission rate (MSER)* requirement to which a *stationary source* is otherwise subject for a *process unit* and/or *fuel burning equipment unit* at the time of application for an *operating permit*, shall be the applicable *RACT* requirement pursuant to subsection (a) of this section for such *process unit* and/or *fuel burning equipment unit* provided that such *MSER* or *RACT* requirement was established less than ten (10) years prior to the *operating permit application* being determined or deemed administratively complete.

**5-1011 TERM OF OPERATING PERMIT**

Each *operating permit* issued under this subchapter shall be for a fixed term determined by the *Secretary*, not to exceed five (5) years.

**5-1012 PERMIT EXPIRATION AND RENEWAL**

- (a) Each *operating permit*, unless sooner terminated in accordance with section 5-1008(e), will expire at the end of its term except as provided in subsection (c) of this section.
- (b) Applications for *operating permit renewal* are subject to the same requirements, including those for public participation, that apply to initial *operating permit applications*, except as provided under Section 5-1007(c) of this subchapter.
- (c) If a timely and *administratively complete application* for *operating permit renewal* is submitted to the *Secretary*, but the *Secretary* has failed to issue or deny such renewal before the end of the term of the previous permit, then the *owner/operator* may continue to operate the *subject source* and all terms and conditions of such previous *operating permit* shall remain in effect until the *Secretary* has issued or denied the *operating permit renewal*. However, such previous *operating permit* shall automatically expire if, subsequent to the application being determined or deemed administratively complete pursuant to Section 5-1006 of this subchapter, the *owner/operator* fails to submit any additional information required by the *Secretary* as well as information pertaining to changes to the *subject source* within thirty (30) days or such other period specified in writing by the *Secretary*.

**5-1013 OPERATING PERMIT AMENDMENTS**

- (a) An *administrative operating permit amendment* may be made by the *Secretary* consistent with the following:
  - (1) The *Secretary* may incorporate such changes without providing notice to the public or *affected States*.

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- (2) The *owner/operator* may implement the changes addressed in the request for an *administrative operating permit amendment* immediately upon submittal of the request to the *Secretary*. Notwithstanding Section 5-1009(b) of this subchapter, the *Secretary* will act on the request within 60 days of its receipt by the *Secretary*. Should the *Secretary* deny the request, the *owner/operator* must take whatever action is necessary to comply with the denial.
- (b) The *Secretary* may issue a *minor permit amendment* without providing opportunity for public participation (§ 5-1007) provided the applicant submits an *administratively complete application* which includes:
    - (1) a description of the proposed change, the *emissions* which would result from the proposed change, and any new requirements that will apply if the change occurs;
    - (2) citation of all requirements applicable to the *subject source* as a result of the change and a description of how compliance with such requirements can be determined;
    - (3) certification by a *responsible official* that the proposed change is eligible to be processed as a *minor permit amendment* in accordance with Section 5-1002 of this subchapter.
  - (c) Except as provided in (a) and (b) above, the procedure for processing an application for an *operating permit amendment* shall be the same as that used to process an application for an initial *operating permit*. In the case of a *minor permit amendment* for a *Title V subject source*, the *Secretary* shall notify *affected states* and *EPA* upon receipt of an *administratively complete application* and the proposed permit shall be subject to Section 5-1008(b) and (c) of this subchapter.
  - (d) An *operating permit amendment* for the purposes of the acid rain portion of an *operating permit* shall be subject to regulations promulgated under Title IV of the federal Clean Air Act [42 U.S.C. §§ 7651-7651o].

**5-1014 OPERATIONAL FLEXIBILITY**

- (a) An *owner/operator* may make a change to a permitted *subject source* without securing approval of the *Secretary* or requesting an *operating permit amendment* provided that:
  - (1) The change does not constitute a modification under any provision of the Air Pollution Control Regulations;
  - (2) The change is not subject to Title IV of the federal Clean Air Act [42 U.S.C. §§ 7651-7651o];
  - (3) The change does not cause any subject source to exceed the emissions allowable under the operating permit (whether expressed therein as a rate of emissions or in terms of total emissions);

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- (4) The change meets all applicable requirements and the change does not contravene a permit term and condition for monitoring, record keeping, reporting, or compliance certification;
- (5) For the balancing of emissions increases and decreases between emission units at a Title V subject source, all emissions from the change are quantifiable and there are replicable procedures to enforce the emission trades; and,
- (6) The owner/operator of the permitted subject source provides the Secretary (and the EPA for Title V subject sources) with written notice received at least fifteen (15) days in advance of the proposed change. Such notice shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term that is no longer applicable as a result of the change. The owner/operator shall attach a copy of such written notice to the operating permit.

**5-1015 PERMIT CONTENT**

- (a) Each *operating permit* issued to a *Title V subject source* under this subchapter will include the following elements:
  - (1) Specified *emission* limitations and standards, including those operational requirements and limitations that assure compliance with all *applicable requirements*;
  - (2) A reference, but not necessarily all references, of the origin and authority for each term or condition;
  - (3) Emission monitoring and analysis procedures or test methods required under the *applicable requirements*;
  - (4) Conditions for record keeping and periodic monitoring as the *Secretary* deems necessary to collect reliable data representative of the *subject source's* compliance with the *operating permit* including the installation, use and maintenance of monitoring equipment;
  - (5) Reporting requirements requiring, at a minimum, submittal of reports of any required monitoring, certified by a *responsible official* in accordance with Section 5-1006(f) of this subchapter, at least every six (6) months;
  - (6) 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 preventative measures taken. Prompt shall be defined on a case-by-case basis in each *operating permit*, shall be at least as stringent as is required for permits issued to *Title V subject sources* by *EPA*, and shall be determined in

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relation to the degree and type of deviation likely to occur and the applicable requirements;

- (7) A provision requiring that reports, records of all monitoring data and related information required by the *operating permit* be retained by the *subject source* for at least five (5) years from the date of the monitoring, measurement, or report;
- (8) Terms and conditions, including the requirement to maintain records of switches in operating scenario, for reasonably anticipated alternative operating scenarios identified by the *subject source* in its application as approved by the *Secretary*;
- (9) Specific designation by the *Secretary* in the Findings of Fact of any operating permit for a Title V subject source, of terms and conditions which are not federally enforceable under the Act or under any of its applicable requirements;
- (10) Inspection and entry requirements requiring that, upon presentation of credentials, the permittee shall allow an authorized representative of the *Secretary* access, at reasonable times, to all properties covered by the permit and where *emissions* related activity is conducted for the purpose of ascertaining compliance with the permit and *applicable requirements*;
- (11) Requirements for submittal of compliance certifications, including, but not limited to, the frequency of submission of compliance certifications;
- (12) If necessary, a *schedule of compliance* and requirements for submittal of progress reports;
- (13) Provisions indicating that the *Secretary* may reopen an *operating permit* prior to the expiration of the *operating permit* in accordance with Section 5-1008(e); and,
- (14) If requested by an *owner/operator* in accordance with the provisions of this subsection, a "permit shield" provision that identifies specific *state* or *federally enforceable* regulations and standards derived therefrom which are not applicable to a source. Enforcement actions based on those identified regulations and standards may not be initiated against the source covered by the shield. However, a "permit shield" is not available as part of an *administrative* or *minor permit amendment* and does not apply to changes permitted under Section 5-1014.
  - (i) Such a shield shall only have legal effect if:
    - (A) The *Secretary*, in acting on an *operating permit application*, determines in writing which specific *state* or *federally enforceable* regulations and standards derived therefrom are not applicable to the

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*stationary source* and the *operating permit* contains an express delineation of each such regulation or standard;

- (B) The *applicant* includes, in its application, a draft permit shield provision in the form and with the elements specified by the *Secretary*, itemizing each specific *state* or *federally enforceable* regulation or standard derived therefrom which said *applicant* believes is not applicable to such *stationary source*; and,
  - (C) An *operating permit* expressly states that a "permit shield" exists in accordance with this subsection, otherwise the *operating permit* shall not provide such a shield;
- (ii) A permit shield shall not limit the *Secretary's* ability to reopen and/or amend an *operating permit* pursuant to section 5-1008(e) of this subchapter. Notwithstanding any other provision of this subchapter, the *Secretary* need not receive an *operating permit application* from the *owner/operator* of a *subject source* in order to reopen and/or amend a "permit shield" provision.
  - (iii) Notwithstanding paragraph (14) of this subsection, the *stationary source* must comply with those *state* or *federally enforceable* regulations and standards that become applicable during the term of the *operating permit*, even if those requirements are not set forth in the *operating permit*.
  - (iv) Notwithstanding this paragraph (14) of this subsection, an *owner/operator* shall remain liable for any violation of applicable provisions of law that occurred prior to or at the time of issuance of an *operating permit*.
  - (v) The permit shield shall be void if it is based on or affected by any false, inaccurate, or incomplete information provided by the *applicant*.
  - (vi) The permit shield shall not limit in any way or prevent the *Secretary* from issuing an emergency administrative order in accordance with 10 V.S.A. § 8009 or an emergency order pursuant to 10 V.S.A. § 560. The permit shield shall remain in effect with respect to any regulations or standards delineated in the permit shield provision which are not affected by, or the basis for such emergency orders. No emergency administrative order issued to an *owner/operator* which is based on regulations or standards that are delineated in such source's permit shield provision shall contain monetary penalties.

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(vii) The permit shield shall not apply to, or affect those provisions of law which implement the requirements and provisions of Title IV of the federal Clean Air Act (42 U.S.C. §§ 7651-7651o) and the regulations promulgated thereunder.

(15) If requested by the *owner/operator*, terms and conditions for the balancing of *emissions* increases and decreases between emission units at a *Title V subject source* for the purpose of complying with a federally enforceable *emissions* cap contained in the *operating permit* if such balancing of emissions is permissible under Section 5-1014;

(16) Such other provisions, consistent with this subchapter, 10 V.S.A. Chapter 23, the federal Clean Air Act [42 U.S.C. § 7401, et seq.] and the regulations promulgated thereunder, as the *Secretary* may incorporate.

(b) For *subject sources* other than *Title V subject sources*, each *operating permit* may include any or all of the elements set forth in subsection (a), above.

**5-1016 LIMITING ALLOWABLE EMISSIONS**

(a) For any air contaminant source that is not a *Title V subject source* and which is subject to this subchapter solely due to Section 5-1003(a)(1), if the *owner/operator* demonstrates to the satisfaction of the *Secretary* that *actual emissions* of air contaminants from the *stationary source* have not equaled or exceeded ten (10) tons in any calendar year commencing January 1, 1995, then the *actual emissions* of such *stationary source* for such calendar year shall be deemed to be the *stationary source's allowable emissions*, notwithstanding Section 5-101 of these regulations. Such *stationary source* need not secure an *operating permit* which would otherwise be required by this subchapter so long as *actual emissions* of air contaminants from the *stationary source* are less than ten (10) tons per calendar year.

(b) In order to make such a demonstration to the *Secretary*, the *owner/operator* must submit an annual registration to the *Secretary*, in accordance with the procedures specified in Subchapter VIII of these regulations, certifying that *actual emissions* of air contaminants from the *stationary source*, for the preceding year, did not exceed ten (10) tons.

(c) No air contaminant source, which is exempt under this section from the *operating permit* requirement, shall emit ten (10) tons or more of air contaminants in a calendar year or violate any provision of this section.

(d) The *owner/operator* of an air contaminant source making an annual certification under this section shall keep and maintain records to determine *actual emissions*. Such records shall include, but not be limited to, *emissions* monitoring, monitoring of *fuel* usage, production

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rates, hours of operation, product purchases, and any other information that the *Secretary* may require to calculate *actual emissions* from the air contaminant source. Such information shall be summarized in a monthly log, maintained on-site for a minimum of five (5) years from the date of record, and shall be made available to the *Secretary* upon request. Additionally, such *owner/operator* shall consent, in writing, to provide authorized representatives of the *Secretary* with access, at reasonable times, to all properties where *emissions* related activity is conducted for the purpose of verifying the accuracy of such annual certification.