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State Agency Department of Health

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7. REVIEW OF NEW SOURCES AND MODIFICATIONS

7.1 INTRODUCTION

Section 420.18 Review of New Sources and Modifications. of the Requirements for Preparation, Adoption, and Submittal of Implementation Plans sets forth four elements that the procedures to be used by the State for the review of new installations or sources and modifications to existing installations or sources must include or provide.

The four elements of Section 420.18 are:

- (a) Each plan shall set forth legally enforceable procedures that will be used to implement the authority described in § 420.11(a)(4), which procedures shall be adequate to enable the State to determine whether construction or modification of stationary sources will result in violations of applicable portions of the control strategy or will interfere with attainment or maintenance of a national standard.
- (b) Such procedures shall provide for the submission, by the owner or operator of a new stationary source, or existing source which is to be modified, of such information on the nature and amounts of emissions, locations, design, construction, and operation of such sources as may be necessary to permit the State agency to make the determination referred to in paragraph (a) of this section.
- (c) Such procedures shall also include means of disapproving such construction or modification if it will result in a violation of applicable portions of the control strategy or will interfere with attainment or maintenance of a national standard.
- (d) Such procedures shall provide that approval of any construction or modification shall not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.

This section of the Implementation Plan describes the regulations adopted and the procedures to be used throughout the State of North Dakota for the review of new installations or sources and modifications to existing installations or sources according to the format of Section 420.18.

The North Dakota State Department of Health is responsible for review of all new installations or sources and modifications to existing installations or sources throughout the State.

Copies of specific approval of new installations and specific permits to operate will be furnished to the public upon request.

7.2 420.18(a)

All major new installations or sources and modifications to existing installations or sources which result in the emission of an additional or greater amount of air contaminants are required to obtain approval of new installations and a permit to operate from the Department in accordance with R23-25-01, Section 1.090, of Regulation No. 23-25, the North Dakota Air Pollution Control Regulations (formerly Regulation No. 82).

The following installations or sources are not required to obtain approval of new installations or a permit to operate as per Subsection 1.093(1):

- (a) The installation or alteration of an air contaminant detector, air contaminant recorder, combustion controller or combustion shutoff;
- (b) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from equipment;
- (c) Fuel-burning equipment, other than smokehouse generators, which uses gas as a fuel for space heating, which is used for air conditioning or heating water, which is used in a private dwelling or has a BTU input of not more than 10,000,000 BTU per hour, or which is used for space heating, other than boilers and hot air furnaces;
- (d) Laboratory equipment used exclusively for chemical or physical analyses;
- (e) Open burning of refuse and other combustible material as provided for in R23-25-04, Section 4.200 of these regulations.
- (f) Flares used to indicate some danger to the public;
- (g) Retail and wholesale establishments where no processing or incineration occurs and where solid or liquid fuel is not burned;
- (h) Mobile internal combustion engines;
- (i) Structures used solely as residential dwellings and no incineration occurs; and
- (j) Other sources of minor significance as specified by the Department.

All other new installations or sources must make application for an approval of new installations and permit to operate on forms

furnished by the Department. All new applications are assigned to a Department engineer for evaluation. The evaluation is accomplished by a review of all plans and specifications for the equipment, process chemistry, process flow, operation details, siting information, and emission information. The engineer reviews the calculations or estimations of the types and quantities of air contaminants generated. The exhaust ventilation system is checked to insure that it is designed and sized properly. Calculations of the efficiency of the control devices are made. Based on his evaluation, the engineer makes a recommendation to the Department for approval, conditional approval or denial of the application. His evaluation is based on an adequate demonstration by the applicant that he will comply with all applicable laws and rules and regulations adopted pursuant thereto; also a determination is made by the Department whether the new installation or source will interfere with the attainment or maintenance of the national ambient air quality standards. An approval of new installations is issued by the Department if the new installation or source demonstrates that it will be in compliance with all applicable rules and regulations. A conditional approval as provided in R23-25-01, Section 1.090, Subsection 1.091(5) of Regulation No. 23-25 is issued if necessary to insure compliance. The application for approval of new installations is denied by the Department if the new installation or source failed to demonstrate that it will be in compliance with applicable rules and regulations or if the Department determines that the new installation or source will interfere with attainment or maintenance of the national ambient air quality standards. A reapplication will be accepted if the reasons for denial are satisfied.

All new installations or sources and modifications to existing installations or sources are also required to obtain a permit to operate prior to operation. The engineer responsible for review of the approval of new installations conducts an inspection to determine if the new installation or source was constructed in accordance with approved plans and specifications. Source tests are requested from the new installation or source if necessary to determine compliance with applicable emission limitations; the Department may conduct tests or take samples as an alternate. Based on his inspection and an analysis of any required source tests, engineer will recommend to the Department either approval, conditional approval, or denial of the permit to operate. A permit to operate is issued by the Department if the new installation or source demonstrates compliance, subject to conditions if necessary as provided by Subsection 1.092(6) of Regulation No. 23-25. In the event that the Department denies an approval of new installations or a permit to operate, the new installation or source may appeal the denial in accordance with the provisions and procedures of Chapter 28-32, The Administrative Agencies Practice Act, of the North Dakota Century Code. These appeals procedures include a public hearing by the Department, a rehearing by the Department, and then an appeal may be taken to the district courts. A copy of Chapter 28-32 is attached in Appendix B.

7.3 420.18(b)

R23-25-01, Section 1.090, Subsection 1.091(2)(d) of Regulation No. R23-25, the North Dakota Air Pollution Control Regulations, requires that applications for approval of new installations be accompanied by siting information, emission information, plans, descriptions, specifications and drawings showing the design of the new installation or source, the manner in which it will be operated and controlled, and the expected emissions from it. Also, the Department may require that additional information be provided upon request as per Subsection 1.091(2)(e). All new installations and sources may be required to obtain performance tests, if necessary, to determine compliance prior to issuance of a permit to operate as per Subsection 1.092(4).

7.4 420.18(c)

The permit system described in Section 7.2 provides the means to disapprove construction of any new installation or source that will violate applicable rules and regulations or interfere with attainment and maintenance of national ambient air quality standards. No approval of new installations or permit to operate will be granted to a new installation or source that does not meet the requirements of Regulation No. 23-25, the North Dakota Air Pollution Control Regulations, or any applicable Federal standards or regulations.

7.5 420.18(d)

R23-25-01, Section 1.090, Subsection 1.093(2) of Regulation No. 23-25, the North Dakota Air Pollution Control Regulations, provides that possession of approval of new installations or a permit to operate does not relieve any person of the responsibility to comply with the requirements of Regulation No. 23-25 and other applicable rules and regulations.

on as follows:

7.6 Revisions to Section 51.18 Review of New Sources and Modifications -
June 18, 1973

Section 51.18 Review of New Sources and Modifications (formerly Section 420.18) of the Requirements for Preparation, Adoption, and Submittal of Implementation Plans was revised on June 18, 1973 (38 Federal Register 15834). The purpose of the revisions is to expand the scope of review prior to construction or modification of buildings, facilities, and installations so as to require consideration of the air quality impact not only of pollutants emitted directly from stationary sources, but also of pollution arising from mobile source activity (indirect sources) associated with such buildings, facilities, and installations; and to provide the opportunity for public comment in the administrative procedures used by the State for the review of new sources and modifications.

The number of elements that the procedures to be used by the State for the review of new sources and modifications must include or provide has been expanded from four to eight by the revisions to Section 51.18 of June 18, 1973.

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The eight elements of the revised Section 51.18 are:

- (a) Each plan shall set forth legally enforceable procedures which shall be adequate to enable the State or a local agency to determine whether the construction or modification of a facility, building, structure, or installation, or combination thereof, will result in violations of applicable portions of the control strategy or will interfere with attainment or maintenance of a national standard either directly because of emissions from it, or indirectly, because of emissions resulting from mobile source activities associated with it.
- (b) Such procedures shall include means by which the State or local agency responsible for final decision-making on an application for approval to construct or modify will prevent such construction or modification if it will result in a violation of applicable portions of the control strategy or will interfere with the attainment or maintenance of a national standard.
- (c) Such procedures shall provide for the submission, by the owner or operator of the building, facility, structure, or installation to be constructed or modified, of such information on:
 - (1) The nature and amounts of emissions to be emitted by it or emitted by associated mobile sources;
 - (2) The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section.
- (d) Such procedures shall provide that approval of any construction or modification shall not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.
- (e) Each plan shall identify the State or local agency which will be responsible for meeting the requirements of this section in each area of the State. Where such responsibility rests with an agency other than an air pollution control agency, such agency shall consult with the appropriate State or local air pollution control agency in carrying out the provisions of this section.
- (f) Such procedures shall identify types and sizes of facilities, buildings, structures, or installations which will be subject to review pursuant to this section. The plan shall discuss the basis for determining which facilities shall be subject to review.

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(g) The plan shall include the administrative procedures, which will be followed in making the determination specified in paragraph (a) of this section.

(h) (1) Such procedures shall provide that prior to approving or disapproving the construction or modification of a facility, building, structure, or installation pursuant to this section, the State or local agency will provide opportunity for public comment on the information submitted by the owner or operator and on the agency's analysis of the effect of such construction or modification on ambient air quality, including the agency's proposed approval or disapproval.

(2) For purposes of paragraph (h)(1) of this section, opportunity for public comment shall include, as a minimum:

(i) Availability for public inspection in at least one location in the region affected of the information submitted by the owner or operator and of the State or local agency's analysis of the effect on air quality.

(ii) A 30-day period for submittal of public comment, and

(iii) A notice by prominent advertisement in the region affected of the location of the source information and analysis specified in paragraph (h)(2)(i) of this section.

(3) Where the 30-day comment period required in paragraph (h) of this section would conflict with existing requirements for acting on requests for permission to construct or modify, the State may submit for approval a comment period which is consistent with such existing requirements.

(4) A copy of the notice required by paragraph (h)(2) of this section shall also be sent to the administrator through the appropriate regional office, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. The notice also shall be sent to any other agency in the region having responsibility for implementing the procedures required under this section.

(i) Suggestions for developing procedures to meet the requirements of this section are set forth in Appendix O.

Prominent advertisement in the region affected shall mean publication of a notice in the official county newspaper of the county in which the new installation or source is located and in the principal daily newspaper with coverage in the area of the source. This newspaper will be the Bismarck Tribune, the Fargo Forum, the Grand Forks Herald, the Minot Daily News, or similar newspaper. The Associated Press will also receive a copy of every notice. The Department shall also maintain a mailing list specific for notices of public comment periods on Approval of New Installation applications. Individuals and groups would be placed on this list at their request to receive these notices. The Department, at its discretion, will publish additional notices in the official county newspapers of any surrounding counties which the Department determines may be substantially affected by the new installation or source.

The location in each region where the information will be available for public inspection during normal working hours will be at the offices of the State Department of Health at the State Capitol in Bismarck (Region 172) and at the offices of the Fargo City Health Department at the Fargo Civic Center, 204 North 4th Street in Fargo (Region 130).

A copy of each notice shall also be sent to the administrator of the U.S. Environmental Protection Agency through the appropriate regional office, and to all other State and local air pollution control agencies having jurisdiction in the region in which the new or modified installation will be located.

The effective date of the revised Subsection 1.091(4) of Regulation No. 23-25 shall be December 15, 1973.

The State does not have adequate legal authority to expand the scope of review of new sources and modifications to include indirect sources as well as direct sources of air pollution as required by (a) and (c) (1). This lack of adequate legal authority is discussed in Section 2, Subsection 2.9 of the Plan.

The procedures required by the seven elements, (a) through (g) of the revised Section 51.18 with respect to direct sources of air pollution are adequately provided for by the present State air pollution control law and regulations and are described in Subsections 7.1, 7.2, 7.3, 7.4, and 7.5 of Section 7. of the Plan.

Element (h) of the revised Section 51.18 requires that the administrative procedures which will be followed by the State for the review of new sources and modifications provide the opportunity for public comment.

Subsection 1.091(4), Action on Applications, of R23-25-01, Section 1.090 of Regulation 23-25, the North Dakota Air Pollution Control Regulations, has been revised to provide the public comment period required by element (h) of the revised Section 51.18.

The revised Subsection 1.091(4) requires that the State Department of Health, within thirty (30) days after receipt of an application acceptable to the Department, the Department shall notify the public by prominent advertisement in the region affected, of the opportunity for public comment on the information submitted by the applicant.

Such information, including the Department's analysis of the effect of the facility on air quality and the Department's proposed approval, conditional approval, or denial, shall be available for public inspection in at least one location in the region affected.

Public comments submitted within thirty (30) days of the date such information is made available shall be considered by the Department in making the final decision on the application.

The Department shall take final action on an application within thirty (30) days after the close of the public comment period. The Department shall notify, the applicant, in writing, of the final approval, conditional approval, or denial of the application, and will set forth the reasons for conditional approval or denial.