for all non-grandfathered emission units above Air Pollutant Emission Notice de minimis levels, or individual emission permits for those emission units.

II.D.6. All incinerators require a permit as stated in Regulation Number1, Section III.B.1.

II.D.7. Oil and gas exploration and production operations that are addressed under Section II.D.1.III. of this Regulation Number 3, Part A, and that are required to obtain a construction permit, are not required to file an application for a construction permit until they are required to file an Air Pollutant Emission Notice, as set forth in Section II.D.1.III. The application shall include a list of all applicable requirements, and how the requirements will be met until a construction permit is issued.

II.D.8. Any person may request the Division to add source categories to the permit exemption list, in accordance with the procedures set forth in Section II.D.4. of Part A of this regulation.

II.D.9. Sources with a valid operating permit are not required to obtain a construction permit prior to commencing construction or modification, as set forth in Section II.A.6. of this Part B.

III. Construction Permit Review Procedures

III.A. Option for Pre Application Meeting

Prior to submitting an application for a permit, an applicant may request and, if so requested, the Division shall grant, a pre-application meeting with the applicant. At such meeting, the Division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications and the data required to be furnished with the permit application.

III.B. Application for a Construction Permit

III.B.1. An application for a Construction Permit shall be prepared on forms currently supplied by the Division.

III.B.2. Applications for Construction Permits, and modifications to Construction Permits, must include an Air Pollutant Emission Notice.

III.B.3. Applications shall be signed by a person legally authorized to act on behalf of the applicant. The applicant shall furnish all information and data required by the Division to evaluate the permit application and to make its preliminary analysis in accordance with Section III.B.5. of this part.

III.B.4. An application for a Construction Permit will not be deemed to be complete until all information and data required to evaluate the application have been submitted to the Division. Within sixty calendar days after the receipt of an application or any supplemental information timely requested by the Division, the Division will give notice to the applicant if and in what respect the application is incomplete. If the Division fails to notify an applicant that the application is incomplete within sixty calendar days of receipt of the original application or receipt of the requested supplemental information, the application shall be deemed to have been complete as of the day of receipt by the Division of the application or the last submitted supplemental information, whichever is later.

III.B.5. Except for applications for sources subject to the requirements of Section VI. of Part D of this regulation (Prevention of Significant Deterioration), the Division shall pre-

pare its preliminary analysis within sixty calendar days after receipt of a complete permit application. The preliminary analysis allows the Division to determine whether the new source will, at date of commencement of operation, comply with:

III.B.5.a. All applicable emission control regulations,

III.B.5.b. Applicable regulations for the control of hazardous pollutants,

III.B.5.c. Requirements of the nonattainment and attainment programs (Sections V. and VI. of Part D), and

III.B.5.d. Any applicable ambient air quality standards and all applicable regulations.

The preliminary analysis shall indicate what impact, if any, the new source will have (as of the projected date of commencement of operation) on all areas (attainment, attainment/maintenance, nonattainment, unclassifiable), within the probable area of influence of the proposed source. If so requested on the permit application form, a copy of this preliminary analysis shall be forwarded to the applicant postmarked no later than fifteen calendar days after the completion of the preliminary analysis.

When the preliminary analysis includes modeling, the model used shall be an appropriate one given the topography, meteorology and other characteristics of the region that the source will impact. Use of any non-guideline model requires U.S. EPA approval under Section VIII.A. of Part A of this regulation.

III.C. Public Comment and Hearing Requirements

III.C.1. The following sources, unless exempted in Section III.C.2., below, are subject to public comment:

III.C.1.a. Sources with projected controlled annual emissions of any pollutant for which an ambient air quality standard has been designated, where such emissions will be greater than twenty five tons per year if the source is located in a nonattainment area, fifty tons per year if the source is located in an attainment area, or two hundred pounds per year of lead (for any area of the state).

III.C.1.b. Sources for which preliminary analysis indicates a possible violation of Commission Regulation Number 2 (odor emissions).

III.C.1.c. For hazardous air pollutants if:

III.C.1.c.(i) The source is subject to Federal National Emission Standards for Hazardous Air Pollutants,

III.C.1.c.(ii) The source is subject to Federal or Colorado Maximum Achievable Control Technology or Generally Available Control Technology standards, or

III.C.1.c.(iii) The source is voluntarily applying for permit conditions to limit the source's potential to emit hazardous air pollutants.

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III.C.1.d. Sources subject to Sections V. or VI. of Part D of this regulation that are attempting to obtain a federally enforceable limit on the potential to emit of the source in order to avoid other requirements.

III.C.1.e. Sources submitting an application for a BART determination or BART alternative pursuant to Regulation Number 3, Part F.

III.C.2. The following sources are generally not required to be subject to public comment, unless the Division determines that public comment is warranted pursuant to Section III.C.3. below:

III.C.2.a. Sources of six months duration or less, except that public comment shall be required for all major sources of hazardous pollutants without regard to the duration of the operation of such source unless specifically exempted below.

III.C.2.b. Demolition projects, even if asbestos materials are present, provided that all the requirements of Regulation Number 8 are followed for any and all materials suspected of containing asbestos.

III.C.2.c. Construction or modification of sources in accordance with the minor modification and operational flexibility provisions of Sections X., XI., and XII. of Part C of this regulation are subject to the public participation requirements of Part C.

III.C.3. Sources for which a permit is required, but for which public comment is not required by Sections III.C.1., III.C.2.a., or III.C.2.b., above, are exempt from public comment requirements unless the Division determines that public comment is warranted. In making such determinations, the Division shall take into consideration the duration of the operation, its location, the nature and projected amount of emissions, anticipated public concern, and other relevant factors.

III.C.4. When public comment is required by Section III.C.1., or when the Division determines, pursuant to Section III.C.3., that an application warrants public comment, the Division shall, within fifteen calendar days after the preparation of the preliminary analysis, cause public notice of the application to be published in a newspaper of general distribution in the area in which the proposed project or activity is or will be located, and by such other means necessary to assure notice to the affected public, that may include posting of such notice on the publicly accessible portion of the Division's web site, and cause a copy of the application, the preliminary analysis and the draft permit to be filed with the county clerk for each county in which the source is, or will be located. The Division shall send written or electronic notice to persons requesting notice of permit applications for the type of source or geographic area. For sources applying for a permit to limit the potential to emit criteria pollutants or federal hazardous air pollutants, the Division shall send a copy of the public notice and the draft permit to the U.S. EPA Administrator for comment. The Division shall also send a copy of the final permit approval to the U.S. EPA Administrator for comment. The newspaper notice and the Division's web site notice shall contain all of the following information in Sections III.C.4.a. through III.C.4.e., below:

III.C.4.a. The location and nature of the proposed project or activity for which a construction permit application has been filed.

III.C.4.b. The locations where the application and preliminary analysis are available for public inspection.

III.C.4.c. That comments concerning the ability of the proposed project or activity to comply with the applicable standards and regulations of the Commission are solicited from any interested person.

III.C.4.d. That the Division will receive and consider public comments for thirty calendar days after such publication.

III.C.4.e. The Division's preliminary determination of approval, conditional approval, or disapproval of the application.

III.D. Construction Permit Review Requirements

III.D.1. Requirements applicable to all construction permit applications (except that processing timeframes of combined construction/operating applications shall be as set forth in Part C, Section IV., of this Regulation Number 3). Within thirty calendar days following the completion of the Division's preliminary analysis for applications not subject to the public comment, within thirty calendar days following the period for public comment for applications subject to public comment, or if a public comment hearing is held, within thirty calendar days following such hearing, the Division shall grant the permit if it finds that:

III.D.1.a. The proposed source or activity will meet all applicable emission control regulations and regulations for the control of hazardous air pollutants;

III.D.1.b. As applicable, the proposed source or activity will meet the requirements of the attainment program as outlined in Section V. of Part D of this regulation, if any;

III.D.1.c. The proposed source or activity will not cause an exceedance of any National Ambient Air Quality Standards;

III.D.1.d. The source or activity will meet any applicable ambient air quality standards and all applicable regulations;

III.D.1.e. As applicable, the proposed source or modification will meet the requirements of the prevention of significant deterioration program of Section VI. of Part D of this regulation.

[Provided however, that the Division shall not deny a permit for failure of the proposed source to meet any applicable requirement of the state implementation plan where (1) there is pending an application for a revision to the state implementation plan pursuant to Colorado Revised Statute, Section 25-7-305 (Alternative Emission Reduction) that, if adopted, would require the Division to grant the permit and (2) the applicant waives the time constraints on the Division to act on its application until the Commission has issued its final decision on the request for a state implementation plan revision and the U.S. EPA has acted on the proposed revision to the state implementation plan. In such circumstances, the Division shall delay its decision on the permit application until after final action on the request for revision of the state implementation plan (including action by the U.S. EPA)];

III.D.1.f. The fees required in Section VI. of Part A of this regulation have been paid;

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III.D.1.g. Permit approval shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state, or federal law.

III.D.2. RACT Requirements for new or modified Minor Sources (including new or modified minor emissions units at major stationary sources) of volatile organic compounds, carbon monoxide, nitrogen oxides, sulfur dioxide, and PM10 in nonattainment and attainment/maintenance areas:

III.D.2.a. Minor sources in designated nonattainment or attainment/maintenance areas that are otherwise not exempt pursuant to Section II.D. of this Part, shall apply Reasonably Available Control Technology for the pollutants for which the area is nonattainment or attainment/maintenance.

III.D.2.b. In the Denver Metropolitan PM10 attainment/maintenance area, for any new minor source with a potential to emit forty tons per year or more of nitrogen oxides or sulfur dioxide, or a modification of an existing minor source with a net emissions increase of forty tons per year or more of nitrogen oxides or sulfur dioxide, the source will install Reasonably Available Control Technology.

III.E. Permit Terms and Conditions

The Division shall include such terms and conditions in any permit as it deems necessary for the proposed project or activity to qualify for the permit.

III.F. Denial or Revocation of the Construction Permit

III.F.1. If the Division determines that a source cannot comply with the provisions of Part B, Section III.D., of this regulation, the Division shall issue its written denial of the permit application stating the reasons for such denial. Any Division denial of a permit shall become final upon mailing of the denial notice to the applicant by certified mail. The applicant may appeal the Division's final denial of a permit as provided in Section III.F.3., below.

III.F.2. Any applicant for a construction permit shall advise the Division in writing of any refusal to accept any permit condition imposed by the Division within twenty calendar days after receipt of the permit. Such refusal shall be deemed a denial of the permit application.

III.F.3. If the Division denies a permit, imposes conditions upon a permit that are contested by the applicant, revokes a permit, or requires a permit from a source that may qualify for an exemption, the applicant or owner or operator of a source may request a hearing before the Commission for review of the Division's action. The request for a hearing must be filed with the Commission within thirty days after the issuance of the permit, denial or revocation. The hearing shall be heard in accordance with the provisions of Section 1.6.0. of the Commission's procedural rules, Colorado Revised Statute Sections 25-7-114.5(8), and 25-7-119, (Colorado Air Pollution Prevention and Control Act) and Section 24-4-105, (State Administrative Procedure Act).

III.F.4. Initial Approval Expiration

III.F.4.a. An initially approved permit shall expire if the owner or operator of the source for which the permit was issued: (i) does not commence construction or operation of the source within eighteen months after either the date of

issuance of the permit or the date on which such construction or activity was scheduled to commence as set forth in the permit, whichever is later; (ii) discontinues construction for a period of eighteen months or more; or (iii) does not complete construction within a reasonable time of the estimated completion date.

III.F.4.b. Upon a showing of good cause by the permittee, the Division may grant extensions of the permit not to exceed eighteen months per extension. Construction or operation shall commence or be resumed within a reasonable period of time from the granting of the extension. In determining what constitutes good cause or a reasonable period of time, the Division shall consider the degree of construction already completed, the amount invested or legally committed to the project, whether an extension would prevent (e.g., through reservation of a Prevention Significant Deterioration increment) economic development in the affected area, general economic conditions, the health of the community as it affects the ability of the permittee to proceed, and other relevant factors. The Division shall notify the Commission of any requested extensions and the reason given for each request.

III.G. Final Permit Approval

III.G.1. Unless prior and mutually acceptable arrangements have been made, the applicant shall not commence the operation of a stationary source for which a construction permit has been issued or reinstated without giving notice to the Division, thirty calendar days (fifteen calendar days for portable sources) prior to the date on which commencement will take place.

III.G.2. Within 180 calendar days after commencement of operation, the source shall demonstrate to the Division compliance with the terms and conditions of the initial approval construction permit. The Division may inspect the source to determine whether or not the operating terms and conditions of the initial approval construction permit have been satisfied. At the end of 180 days, the Division must revoke the construction permit; or, continue the construction permit if applicable; or, notify the owner or operator that the source has demonstrated compliance with the construction permit.

III.G.3. Before final approval of the permit is granted, the Division may require the applicant to conduct and pay for performance tests in accordance with methods approved by the Division. A test protocol shall be submitted to the Division for review and approval at least thirty days prior to testing. The Division may monitor such tests and may, at its expense, conduct its own performance tests.

III.G.4. For sources that submit an application for an operating permit pursuant to Part C of this Regulation Number 3, including any application for a permit modification or permit renewal, prior to issuance of a final approval construction permit, upon demonstration by the source of compliance with all terms and conditions of the construction permit or a satisfactory final approval inspection, as required pursuant to this Section III.G., the Division may elect to either issue a final approval construction permit or allow the initial approval construction permit to continue in full force and effect. The Division shall provide written notice to the permittee of its election.

III.G.5. If the Division determines that the terms and conditions of the permit have been satisfied, the Division shall issue in writing its final permit approval to the applicant, or shall incorporate the terms and conditions into an operating permit issued in accordance with Part C of this regulation. Otherwise, the Division shall revoke the permit.

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III.G.6. Final approval may be issued at the same time as initial approval for temporary sources of a duration of one month or less.

III.G.7. Prior to issuance of final approval, the applicant shall furnish:

III.G.7.a. An operating and maintenance plan for all control equipment and control practices; and

III.G.7.b. A proposed record keeping format for demonstrating compliance on an ongoing basis.

III.H. Permit Cancellation

Whenever an owner or operator wishes to cancel a permit, the owner or operator shall notify the Division, using forms provided by the Division.

III.I. General Construction Permits

III.I.1. The Division may issue a general construction permit covering numerous similar sources to a source that would otherwise be required to obtain a construction permit pursuant to this Part B. Any general construction permit shall comply with all applicable requirements, including notice and opportunity for public participation where warranted for such sources. The Division may issue a general construction permit in accordance with one or more of the following considerations:

III.I.1.a. The control equipment utilized by the sources;

III.I.1.b. The design characteristics of the sources;

III.I.1.c. The operational variability of the sources;

III.I.1.d. The location of the sources.

III.I.2. A source shall not perform any of the following without first obtaining a valid general construction permit from the Division pursuant to this provision, or a valid construction permit as otherwise required pursuant to Section III. of this Part B:

III.I.2.a. Commence construction or modify any building, facility, structure, or installation;

III.I.2.b. Install any machine, equipment, or other device;

III.I.2.c. Commence the conduct of any such activity;

III.I.2.d. Commence performance of any combinations thereof; or

III.I.2.e. Commence operations of any of the same that will or do constitute a new stationary source.

III.I.3. Administration

III.I.3.a. General construction permits may be issued, modified, revoked and reissued, or terminated in accordance with the provisions of this regulation.

III.I.3.b. Sources shall submit applications to be covered under the general construction permit on forms provided by the Division.

III.I.3.c. Individual Permit Requirements

III.I.3.c.(i) The Division may require any source authorized by a general construction permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

III.I.3.c.(i)(A) A change has occurred in the availability of control technology or practices for the control or abatement of air pollutants applicable to the source; or

III.I.3.c.(i)(B) Circumstances have changed since the time of the request to be covered so that the source is no longer appropriately controlled under the general construction permit.

III.I.3.c.(ii) Any source authorized by a general construction permit may request to be excluded from the coverage of the general construction permit by applying for an individual permit, as provided for under this regulation, Parts A and B.

III.I.3.c.(iii) When the Division issues an individual permit to a source otherwise subject to a general construction permit, the applicability of the general construction permit to the individual permittee is automatically terminated on the effective date of the individual permit.

III.I.3.c.(iv) A source excluded from a general construction permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general construction permit. Upon revocation of the individual permit, the general construction permit shall apply to the source.

III.I.3.c.(v) In determining whether an individual permit is required, the Division may consider the compliance history and current compliance status of the source.

III.I.4. The Division shall review the application and certify or deny the request based on criteria specified in the general construction permit established by the Division for that type of source.

III.I.5. General construction permits shall include conditions necessary to ensure the sources will meet all applicable requirements.

III.I.6. General construction permits issued by the Division may include the following requirements, as appropriate and as specified in each permit:

III.I.6.a. An operating and maintenance plan for all control equipment and control practices;

III.I.6.b. A record keeping format for demonstrating compliance;

III.I.6.c. Monitoring methods to assure compliance; and

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III.I.6.d. Alternative operating scenarios that include specific monitoring, record keeping, and reporting methods that will assure compliance with the permit conditions.

III.I.7. All general construction permits shall undergo statewide public notice. If a source wants to be covered under a general construction permit, the source must apply within the time period specified in the public notice.

PART C CONCERNING OPERATING PERMITS

I. Applicability

The provisions of this Regulation Number 3, Part C shall apply statewide to all sources of air pollutants that are required to obtain an operating permit as specified in Section II. The provisions of this Part C shall also apply, except as otherwise provided herein, to those minor sources of air pollutants that voluntarily choose to obtain an operating permit.

I.A. DEFINITIONS

I.A.1. Affected Source

(acid deposition program) A source of air pollutants that includes one or more fossil fuel fired combustion devices subject to emission reduction requirements or limitations under Title IV of the Federal Act, Code of Federal Regulations Title 40, Part 72, or under the state Act.

I.A.2. Minor Permit Modification

Any revisions to an operating permit issued by the Division that meets the criteria of Sections X. or XI. of this Part C.

I.A.3. Permit Modification

Any revision to an operating permit issued by the Division that cannot be accomplished under the administrative permit amendment procedures set forth in Section III. of Part A of this regulation, or the minor permit modification procedures set forth in Sections X. or XI. of this Part C. A permit modification for purposes of the acid rain portion of a permit shall be governed by regulations promulgated under Title IV of the Federal Act, found at Code of Federal Regulations, Title 40, Part 72.

I.A.4. Permit Shield

Where a source operates in compliance with all operating permit terms and conditions, the source shall be deemed in compliance with the state and Federal Acts where the permit includes all applicable requirements of such acts, specifically states that other identified provisions are not applicable, and states that the permit shield applies. The permit shield does not apply to terms and conditions that become applicable to the source subsequent to permit issuance. The permit shield shall not alter or affect the provisions of Colorado Revised Statutes Sections 25-7-112 or 25-7-113, Section 303 of the Federal Act, the applicable requirements of the acid rain program, consistent with Section 408(a) of the Federal Act, or the ability of the Administrator to obtain information from a source pursuant to Section 114 of the Federal Act; nor shall the permit shield affect the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

I.A.5. Renewal of an Operating Permit