

CNMI AIR POLLUTION CONTROL REGULATIONS

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PART I

AUTHORITY

These regulations have been promulgated by the Department of Public Health and Environmental Services in accordance with Commonwealth of the Northern Mariana Islands Public Law 3-23, and the provisions of the Clean Air Act of 1977, as amended. These regulations shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

PART II

PURPOSE AND POLICY

The purpose of these regulations, technical provisions and specifications is to establish certain minimum standards and requirements as determined by the Department to be necessary for the public health and safety to insure that air resources are protected against pollution and do not constitute a health hazard.

PART III

POLICY

It shall be the policy of the Department of Public Health and Environmental Services, Division of Environmental Quality to:

1. Affirmatively protect the right of each person to a clean and healthful public environment, as guaranteed by Section 9 of Article I of the Constitution;
2. Maintain optimum levels of air quality in order to protect and preserve public health and general welfare;
3. Assure that necessary or desirable economic and social development proceeds in an environmentally responsible manner in order to promote the highest attainable quality of life for present and future generations;
4. Preserve, protect, and improve the aesthetic quality of the air in order to promote the beauty of the Commonwealth for the enjoyment of its residents and visitors.

PART IV

DEFINITIONS

Definitions found in PART IV apply to these regulations and to the CNMI State Implementation Plan. All terms used in these regulations, and not defined herein shall have the meanings given them in the Clean Air Act, as amended.

- (a) "Act" means the Clean Air Act (42 U.S.C. 1857-18571, as amended by Public Law 91-604, 84 Stat. 1676).
- (b) "Administrator" means the Administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.
- (c) "Agricultural burning" shall mean open outdoor fires used in agricultural operations, in the growing of crops, raising of fowl or animals, forest management or range improvement.
- (d) "Air pollutant" shall mean any air pollution agent or combination of such agents, including any physical, chemical biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air, which includes but is not limited to dust, fumes, mist, smoke, other particulate matter, vapor, gas odorous substances, or any combination thereof.
- (e) "Air pollution" shall mean the presence in the outdoor atmosphere of one or more air pollutant in such concentration quantity and duration as is potentially injurious to human health or welfare, animal or plant life, or property or as potentially interfere with the enjoyment of life or property.
- (f) "Allowable emissions" means the emission rate calculated using the maximum rated capacity of the source (unless the source is subjected to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:
 - (1) Applicable standards as set forth in 40 CFR Part 60 and Part 61,
 - (2) The applicable State implementation plan emission limitation, or
 - (3) The emission rate specified as a permit condition.
- (g) "Ambient air" shall mean the general outdoor atmosphere.
- (h) "Area source" means any residential, governmental institutional, commercial, or industrial fuel combustion operations; Onsite solid waste disposal facility; motor vehicles, aircraft, vessels, or other transportation facilities; or other miscellaneous sources as identified through inventory techniques similar to those described in: "A Rapid Survey Technique for Estimating Community Air Pollution Emissions," Public Health Service Publication No. 999-AP-29, October 1966.
- (i) "Baseline concentration" means that ambient concentration level which exists at the time of the applicable baseline data, minus any contribution from major stationary sources and major modifications thereto on which construction commenced on or after January 6, 1975. The baseline concentration shall include contributions from:

- (1) The actual emissions of other sources in existence on the applicable baseline date, except that contributions from such existing sources to the extent that a plant revision proposing less restrictive requirements affects such sources was submitted on or before the baseline date and was pending actions by the Administrator on that date shall be determined from the allowable emissions under the plan was revised; and
 - (2) The allowable emissions of major stationary sources and major modifications which commenced construction January 6, 1975, but were not in operation by the applicable baseline date.
- (j) "Baseline date" means, for every part of an Air Quality Control Region (AQCR) designed as unclassifiable or attainment under section 107(d)(1)(D) or (E) of the Act, the date of the first complete application after August 7, 1977 for a permit under this section for any major stationary source or major modification, in any part of the AQCR.
- (k) "Best available control technology" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the act which would be emitted from any proposed major stationary source or major modification which the permitting authority on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques for control of such pollutant. In no event shall application of the best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. If the reviewing agency determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achieved by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.
- (l) "Capacity factor" means the ratio of the average load on a machine or piece of equipment for the period of time considered, to the capacity rating of the machine or piece of equipment.
- (m) "Chief" shall mean the Chief of the Division of Environmental Quality, Department of Public Health and Environmental Services.
- (n) "Construction" means fabrication, erection, installation, or modification of a source.

(o) "Control Strategy" means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of a national standard, including, but not limited to, measures such as:

- (1) Emission limitations.
- (2) Federal, State or Commonwealth emission charges or taxes or other economic incentives or disincentives.
- (3) Closing or relocation of residential, commercial, or industrial facilities.
- (4) Changes in schedules or methods of operation of commercial or industrial facilities or transportation systems, including, but not limited to, short-term changes made in accordance with standby plans.
- (5) Periodic inspection and testing of motor vehicle emission control systems.
- (6) Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion to gaseous fuels.
- (7) Measures to reduce motor vehicle traffic, including, but not limited to, measures such as appropriate parking restrictions and traffic operations restrictions.
- (8) Expansion or promotion of the use of mass transportation facilities through measures such as increases in the frequency, convenience, and passenger-carrying capacity of mass transportation systems.
- (9) Any land use or transportation control measures not specifically delineated herein.
- (10) Any variation of, or alternative to, any measure delineated herein.

(p) "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals and either has:

- (1) Begun, or caused to begin, a continuous program of physical on-site construction of the source to be completed within a reasonable time; or
- (2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

- (q) "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.
- (r) "Department" shall mean the Department of Public Health and Environmental Services of CNMI or its duly authorized agent, officer, or inspector.
- (s) "Director" shall mean the director of the Department of Public Health and Environmental Services.
- (t) "Division" shall mean the division of Environmental Quality, Department of Public Health and Environmental Services.
- (u) "Effluent water separator" shall mean any tank, box, sump or other container in which any volatile organic compound floating or entrained or contained in water entering such tank, box sump, or other container is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.
- (v) "Emission" shall mean the release or discharge of air pollutants into the ambient air from any source.
- (w) "Emission standard" means a regulation (or portion thereof) setting forth an allowable rate of emission, level of opacity, or prescribing equipment or fuel specifications that result in control of air pollution emissions.
- (x) "Emission unit" means any part of a stationary source which emits or has the potential to emit any air pollutant regulated under the Act.
- (y) "Excess emissions" means emissions of any air pollutant in excess of an emission standard.
- (z) "Existing source" shall mean any stationary source other than a new source, or other than those new sources subject to the Federal Clean Air Act.
- (aa) "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.
- (bb) "Fixed capital cost" means the capital needed to provide all the depreciable components.
- (cc) "Fossil fuel-fixed (sic) steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.
- (dd) "Fuel-burning equipment" shall mean any furnace, boiler, apparatus, stack, and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer.

- (ee) "Fugitive dust" shall mean uncontrolled emission of solid airborne particulate matter from any source other than combustion.
- (ff) "Fugitive emissions" means those emissions which do not pass through a stack, chimney, vent, or other functionally equivalent opening.
- (gg) "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a facility.
- (hh) "Increments of progress" means steps toward compliance which will be taken by a specific source, including:
- (1) Date of submittal of the source's final control plan to the appropriate air pollution control agency;
 - (2) Date by which contracts for emission control systems or process modifications will be awarded; or date by which order will be issued for the purchase of component parts to accomplish emission control or process modification;
 - (3) Date of initiation of on-site construction or installation of emission control equipment or process change;
 - (4) Date by which on-site construction or installation of emission control equipment or process modification is completed; and
 - (5) Date by which final compliance is to be achieved.
- (ii) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emission reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality of environmental impacts.
- (jj) "Low terrain" means any area other than high terrain.
- (kk) "Major modification" means:
- (1) Any physical change in, or change in the method of operation of, a major stationary source, or series of contemporaneous physical changes in or changes in, the method of operation of, a major stationary source, that would result in a significant net increase in that source's potential to emit the pollutant for which the stationary source is major (or that would make the stationary source major taking into account all accumulated net increases in potential emissions occurring at the source, including any initial construction since August 7, 1977). The term "major modification" serves as the definition of "modification" or "modified" when used in the Act in reference to a major stationary source.

- (2) A physical change shall not include routine maintenance, repair and replacement.
- (3) A change in the method of operation, unless previously limited by enforceable permit conditions, shall not include:
 - (i) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), a prohibition under the Power Plant and Industrial Fuel Use Act of 1978 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
 - (ii) Use of an alternative fuel or raw material, if prior to January 6, 1975, the source was capable of accommodating such fuel or material;
 - (iii) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;
 - (iv) Change in ownership of the stationary source; or
 - (v) Use of refuse derived fuel generated from municipal solid waste.
- (4) Changes are "contemporaneous" only if reductions occur after a notice is filed pursuant to paragraph X(B)(1) and before operation of the emission unit or units that will result emission increases. Also, to be "contemporaneous" all of the emission reductions must be completed and enforceable under the state plan before operation of the emission unit or units that will result in any emission increase. Where that new emission unit is a replacement for an emission unit that is being shut down in order to provide the necessary reductions, the reviewing authority may allow up to 180 days for shakedown of the new emission unit before the existing emission unit is required to cease operation.
- (5) For a series of changes in a stationary source to satisfy the requirement of "no net increase," all of the following must be satisfied:
 - (i) All reductions and all increases must be for the same pollutant;
 - (ii) The sum of all decreases must be greater than or equal to the sum of all increases;
 - (iii) On balance the air quality of the affected area must not be adversely impacted.

(6) In performing the calculation in paragraph (kk)(5) of this section (to determine whether the sum of all decreases is greater than or equal to the sum of all increases) the following rules shall apply:

(i) Subject to the following adjustments, the size of an increase or decrease is determined by the difference between the potential or emit of the change of emissions unit before and after the change.

(ii) If potential to emit for a changed emission unit was initially higher than allowable emissions, then no offset credit may be taken for decreasing potential to emit down to allowable emissions.

(iii) The requirement of 40 CFR Part 51, Appendix S, sections IV.C.2 and 4 shall apply involving the amount of credit permissible for changing fuels and for replacing one hydrocarbon compound with another of lesser reactivity.

(11) "Major stationary source" means:

- (1) Any of the following stationary sources of air pollutants which emit, or have the potential to emit, 100 tons per year or more of any pollutant regulated under the Clean Air Act (the "Act"): Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil-fuel boiler (or combination thereof) totalling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capability exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;
- (2) Notwithstanding the stationary source sizes specified in paragraph (11)(1) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant regulated under the Act.
- (3) Any stationary source with the potential to emit 5 tons of lead or more per year.

- (mm) "Modification" shall mean any physical change to or change in the method of operation, including switching to a fuel with a higher sulfur and/or ash content, of a stationary source which changes the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.
- (nn) "National Standard" means either a primary or a secondary standard.
- (oo) "Necessary preconstruction approvals or permits" means those permits or approvals required under Federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.
- (pp) "New source" shall mean any stationary source, the construction or modification of which is commenced after adoption of any applicable regulation and which is not covered by the New Source Performance Standards section of the Federal Clean Air Act (Section III) and the regulations promulgated thereunder.
- (qq) "Nitric acid plant" means any facility producing nitric acid 30 to 70 percent in strength by either the pressure or atmospheric pressure process.
- (rr) "Odors" shall mean smells or aromas which are unpleasant to persons, or which interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or create symptoms of nausea, or which are or may be detrimental or dangerous to health.
- (ss) "Opacity" shall mean a state which renders material partially or wholly impervious to rays of light and causes obstruction to an observer's view.
- (tt) "Open burning" shall mean the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack or flare.
- (uu) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation which directly or indirectly results or may result in emissions of any air pollutant for which a national standard is in effect.
- (vv) "Particulate matter" shall mean any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions.
- (ww) "Person" shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, or any State or political subdivision or agency thereof or any legal predecessor, successor, agent, assign representative, or representative agency of the foregoing.

(xx) "Point Source" means:

- (1) Any stationary source causing emissions in excess of 100 tons (90.7 metric tons) per year of any pollutant for which there is a national standard in a region containing an area whose 1970 "urban place" population, as defined by the Bureau of Census, was equal to or greater than 1 million; or
- (2) Any stationary source causing emissions in excess of 25 tons (22.7 metric tons) per year of any pollutant for which there is a national standard in a region containing an area whose 1970 "urban place" population, as defined by the U.S. Bureau of the Census, was less than 1 million.

(yy) "Potential to emit" means the capability at maximum design capacity to emit a pollutant after the application of air pollution control equipment. Annual potential shall be based on the maximum annual rated capacity of the stationary source assuming continuous year-round operation. Enforceable permit conditions on the type of materials combusted or processed may be used in determining the annual potential. Secondary emissions do not count in determining annual potential. Fugitive emissions also do not count, except with respect to the following stationary sources and then only to the extent quantifiable.

- (1) Coal cleaning plants
- (2) Kraft Pulp mill
- (3) Portland cement plants
- (4) Primary zinc smelters
- (5) Iron and steel mill plants
- (6) Primary aluminum ore reduction plants
- (7) Primary copper smelters
- (8) Municipal incinerators
- (9) Hydrofluoric, sulfuric, or nitric acid plants
- (10) Petroleum refineries
- (11) Lime plants
- (12) Phosphate rock processing plants
- (13) Coke oven batteries
- (14) Sulfur recovery plants
- (15) Carbon black plants
- (16) Primary lead smelters
- (17) Fuel conversion plants
- (18) Sintering plants
- (19) Secondary metal production plants
- (20) Chemical process plants
- (21) Fossil fuel-fired boilers
- (22) Petroleum storage and transfer units
- (23) Taconite ore processing plants
- (24) Glass fiber processing plants
- (25) Charcoal production plants
- (26) Fossil fuel-fired steam electric plants
- (27) Any other stationary source category which, at the time of the applicability determination, is being regulated under section 111 or 112 of the Act.

- zz) "Primary standard" means a national primary ambient air quality standard promulgated pursuant to section 109 of the Act.
- aaa) "Reasonable Available Control Technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.
- bbb) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. However, any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f)(1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this section, except that use of an alternative fuel or raw material by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, or by reason of an order or rule under section 125 of the Act, shall not be considered reconstruction. In determining best available control technology for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a standard of performance under 40 CFR Part 60 is applicable to such stationary source.
- (ccc) "Region" means (1) an air quality control region designated by the Administrator, (2) any area designated by a State agency as an air quality control region and approved by the Administrator, or (3) any area of a State or designated as an air quality control region under paragraph (hh) (1) or (2) of this section.
- (ddd) "Regional Office" means one of the ten (10) EPA Regional Offices.
- (eee) "Ringlemann Chart" shall mean the chart published and described in the U.S. Bureau of Mines Information Circular 8333.
- (fff) "Roadway type" means any class of roadway facility that can be broadly categorized as to function and assigned average speed and capacity values, e.g., expressway, arterial, collector, and local.
- (ggg) "Secondary emission" means emissions which occur or would occur as a result of the construction or operation of a major stationary source or major modification, but do not necessarily come from the major stationary source or major modification itself. For purposes of this section, secondary emissions must be specific and well defined, must be quantifiable, and must impact the same general area as the stationary source or modification which causes the secondary emission. Secondary emissions may include but are not limited to:
- (1) Emissions from ships or trains coming to or from the stationary source or modification; and

- (2) Emissions from any offsite support source which would be constructed or would not otherwise increase its emissions.
- (hhh) "Secondary standard" means a national secondary ambient air quality standard promulgated pursuant to section 109 of the Act.
- (iii) "Smoke" shall mean the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.
- (jjj) "Stack" shall mean any chimney, flue, conduit, or duct arranged to conduct emissions to the ambient air.
- (kkk) "Standard stack conditions" shall mean a dry gas temperature of 70 degrees Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute (21.1 degrees C, 760 mm Hg.).
- (lll) "State Implementation Plan" (or "SIP") shall mean the Air Pollution Implementation Plan for the CNMI as submitted to the U.S. Environmental Protection Agency on or about May 1980 as amended from time to time.
- (mmm) "Stationary source" means any structure, building, facility or installation which emits or may emit any air pollutant regulated under the Act.
- (nnn) "Structure, building, facility or installation" means any grouping of pollutant-emitting activities which are located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by persons under common control).
- (ooo) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.
- (ppp) "Time period" means any period of time designated by hour, month, season, calendar year, averaging time, or other suitable characteristics, for which ambient air quality is estimated.
- (qqq) "Total Suspended Particulates (TSP)" means the total amount of finely divided solid or liquid material, other than uncombined water, which is suspended in gaseous emissions, as measured by reference methods specified in 40 CFR, Part 60 and its subparts.
- (rrr) "Traffic flow measure" means any measure, such as signal light synchronization and curbside parking restrictions, that is taken for the purpose of improving the flow of traffic and thereby reducing emissions of air pollutant from motor vehicles.

- (sss) "Transportation control measure" means any measure, such as reducing vehicle use, changing traffic flow patterns, decreasing emissions from individual motor vehicles, or altering existing modal split patterns that is directed toward reducing emissions of air pollutants from transportation sources.
- (ttt) "Trip type" means any class of vehicle trips possessing one or more characteristics (e.g., work, nonwork, peak, off-peak) that distinguish vehicle trips in the class from vehicle trips not in the class.
- (uuu) "Variance" means the temporary deferral of a final compliance date for an individual source subject to an approved regulation, or a temporary change to an approved regulation as it applies to an individual source.
- (vvv) "Vehicle trip" means any movement of a motor vehicle from one location to another that results in the emission of air pollutants by the motor vehicle.
- (www) "Vehicle type" means any class of motor vehicle (e.g., precontrolled heavy duty vehicles, gasoline powered trucks) whose emissions characteristics are significantly different from the emissions characteristics of motor vehicles not in the class.

PART V

PERMITTING OF NEW SOURCES AND MODIFICATIONS

A. PERMIT REQUIRED

This section applies to all new sources or modifications of major sources of airborne emissions. A permit shall be required for the construction and operation of all new sources and modifications of major sources of emissions.

1. Permit to Construct and Operate

No person shall cause or permit the construction, operation or modification of any new source the use of which may cause the emission of air pollutants without first obtaining a Permit to Construct and Operate for such construction, operation or modification from the Chief. Upon receipt of such permit the applicant is authorized to construct, operate or modify the source in the manner specified in the permit, these regulations, and other applicable Commonwealth and Federal laws, rules and regulations.

B. LIST OF EXEMPTIONS

A Permit to Construct and Operate shall not be required for the following:

1. The installation or altering of an air pollution detector, air pollution recorder, combustion controller or combustion shut-off.

2. Air conditioning or ventilating system not designed to remove air pollutants generated by or released from equipment.
3. Fuel burning equipment, other than smoke house generators, which is used in a private dwelling; or has a BTU gross input rate of less than 500,000 BTU per hour; or is used for space heating, other than boilers and hot air furnaces.
4. Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer systems that have a maximum gross heat input rate of less than 250 million BTU per hour singly or in combination for all systems located at any one site, and are fired exclusively with one of the following: 1) natural or synthetic gas; 2) Liquified petroleum gas; 3) a combination of natural or synthetic and/or liquified petroleum gas.
5. Mobile internal combustion engines.
6. Laboratory equipment used exclusively for chemical or physical analyses.
7. Ocean-going vessels.
8. Other sources of minor significance as specified by the Chief.

C. VIOLATORS NOT EXEMPT

Issuance of a Permit to Construct and Operate shall not exempt any person owning or operating a source from prosecution for violations of applicable rules, regulations and permit conditions.

D. APPLICATIONS

1. Application for a permit to Construct and Operate as required by this section shall be made on forms furnished by the Chief and shall be accompanied by two copies of complete data, siting information, plan description, specifications, drawings, and other detailed information necessary to determine in what manner the new sources will be operated and controlled.
2. Each application shall be signed by the applicant and shall constitute a formal agreement that the applicant will assume responsibility for the construction or modification and operation of the equipment in accordance with these rules and regulations.
3. If the applicant is a partnership or group other than a corporation, the application shall be made by one individual who is a member of the group having sufficient authority to legally commit such partnership or group. If the applicant is a corporation, the application shall be made by an officer of the corporation or general manager of the facility.

E. CONDITIONS FOR CONSIDERING APPLICATIONS

1. Within 14 days after receipt of an application for a Permit to Construct and Operate, or any addition to such application, the Chief shall advise the applicant of any deficiency in the application or in the information submitted. The Chief may also request other additional information from the applicant at any time.
2. If the application is for a major permit, as determined by the Chief, the public must be afforded an adequate opportunity to comment prior to the application being deemed complete. The Chief may hold a hearing if the Chief determines such is necessary.
3. An application will be deemed complete for the purposes of this section either on the date of the close of the public comment period, if any, or the date on which applicant provides the Chief with all required information, whichever date is later. Within 21 days, or if the application is a major permit as determined by the Chief, within 45 days, after receipt of a complete application, the Chief shall make a final determination on the application. The Chief shall notify the applicant in writing of his approval, conditional approval or denial. If the application is for a major permit, prior to a final determination, the following requirements must be met:
 - a. The Chief shall make a preliminary determination whether construction and operation should be approved, approved with conditions, or disapproved;
 - b. The applicant shall have the opportunity to submit a written response to the Chief to any comments submitted by the public not later than 10 days after the close of the public comment period.
4. Approval

The Chief shall approve an application for a Permit to Construct and Operate if the applicant can show to the satisfaction of the Chief that:

- a. The new source is designed, built, and equipped in accordance with reasonably available control technology,
- b. The new source is designed and will be constructed or modified to operate without causing a violation of applicable rules and regulations, and
- c. The new source will not endanger the maintenance or attainment of applicable national ambient air quality standards or ambient air increments as set forth as Maximum Allowable Increases for Class II areas for sulfur dioxide and particulate matter in 40 Code of Federal Regulations §52.21 (c) and (d).

A Permit to Construct and Operate shall be issued for any term not to exceed five years, if the Chief determines that such will be in the public interest. The Chief, on application, may renew a permit for additional terms each not to exceed five years.

5. Conditional Approval

Before granting a Permit to Construct and Operate, the Chief may require the applicant to provide such facilities as are necessary for sampling and testing to determine the air pollutant discharged into the atmosphere and may specify any other conditions which will bring the operation of any new source described in the application within the conditions of this section. Sampling and testing facilities may include but are not limited to the following:

1. Sampling ports of a size, number and location as specified by the Chief.
2. Safe access to the port.
3. Instrumentation for monitoring and recording emission data.

6. Denial

The Chief may deny an application for a Permit to Construct and Operate, if the information submitted shows that the new source described in the application cannot conditionally or otherwise meet the conditions of these regulations, and all fees paid shall be forfeited.

7. PERFORMANCE TESTING

If required by the Chief, the applicant shall conduct performance tests in order to determine compliance with applicable rules and regulations in accordance with the test methods as specified by the Chief with the tests being made at the expense of the applicant. The Chief may monitor or conduct such test at the expense of the applicant.

G. CANCELLATION OF PERMIT TO CONSTRUCT AND OPERATE

1. The Chief may cancel a Permit to Construct and Operate if the approved work is not begun within one year from the date of issuance, or if the work involved in the construction, operation or modification is suspended by the applicant for one year or more.
2. An applicant may request an extension of the cancellation date by writing to the Chief and stating reasons for the request. Extensions may be granted for a period of not more than six months after the cancellation date.

H. SUSPENSION OR REVOCATION OF PERMIT TO CONSTRUCT AND OPERATE

Any violation of these rules and regulations shall be cause for the Chief to suspend or revoke a Permit to Construct and Operate. Suspension or revocation of a Permit to Construct and Operate shall become final ten days after service of notice on the holder of the permit. A Permit to Construct and Operate which has been revoked shall be surrendered forthwith to the Chief, and all fees paid shall be forfeited.

I. TRANSFER OF PERMIT TO CONSTRUCT AND OPERATE

A Permit to Construct and Operate shall not be transferrable, whether by operation of law or otherwise, either from one location to another, from one piece of equipment to another, or from one person to another, without the Chief's approval or approval with conditions. The Chief may deny any such transfer and require a new application for a permit to construct and operate.

J. REPORTING DISCONTINUANCE OR DISMANTLEMENT

It shall be required of holder of the Permit to Construct and Operate to report to the Chief within thirty days of permanent discontinuance or dismantlement of the source for which the Permit to Construct and Operate has been issued. Such permit shall then be surrendered forthwith to the Chief.

K. POSTING OF PERMIT TO CONSTRUCT AND OPERATE

Upon granting of a Permit to Construct and Operate, the applicant shall post a facsimile of such permit in a conspicuous place at or near the source for which the permit was issued.

L. FALSIFYING OR ALTERING A PERMIT TO CONSTRUCT AND OPERATE

A person shall not willfully deface, alter, forge, counterfeit, or falsify a Permit to Construct and Operate.

M. AIR POLLUTION CONTROL TECHNIQUES

The use of dispersion techniques, as defined at 40 CFR §§ 51.1 (hh), (jj) and (kk) as a form of controlling air pollution are not acceptable unless an exemption from those requirements of the Clean Air Act and EPA policy is granted by EPA to the CNMI under Section 325 of the Clean Air Act.

PART VI

REGISTRATION OF EXISTING SOURCES

A. REGISTRATION REQUIRED

Any person responsible for the operation of existing sources, the use of which may cause emission of air pollutants shall be required to register with the Chief not later than six months after the effective date of this regulation.

B. LIST OF EXEMPTIONS

Registration shall not be required for the following:

1. An air pollutant detector, air pollutant recorder, combustion controller, or combustion shutoff.
2. Air conditioning or ventilating systems not designed to remove air pollutants generated or released from equipment.
3. Fuel burning equipment, other than smoke house generators, which is used in a private dwelling; or has a BTU gross input rate of less than 500,000 BTU per hour; or is used for space heating, other than boilers and hot air furnaces.
4. Steam generators, steam superheaters, water boilers, water heaters, and closed heat transfer systems that have a maximum gross heat input rate of less than 250 million BTU per hour singly or in combination for all systems located at any one site, and are fired exclusively with one of the following: 1) natural or synthetic gas; 2) Liquefied petroleum gas; 3) a combination of natural or synthetic and/or liquefied petroleum gas.
5. Mobile internal combustion engines.
6. Laboratory equipment used exclusively for chemical or physical analyses.
7. Ocean-going vessels.
8. Other sources of minor significance as specified by the Chief.

C. REGISTRATION FORMS

Registration shall be made on forms provided for this purpose by the Chief and shall include such information as may be necessary to enable the Chief to evaluate the nature and extent of emissions.

D. VIOLATORS NOT EXEMPT

Registration shall not exempt any person owning or operating a source from prosecution for violation of applicable rules and regulations.

PART VII

SAMPLING, TESTING AND REPORTING METHODS

A. APPROVED SAMPLING AND TESTING TECHNIQUES

1. All sampling and testing shall be made and the results calculated in accordance with test procedures approved by the Chief. All tests shall be made under the direction of persons knowledgeable in the field of air pollution control.
2. The Chief is authorized to conduct tests of emissions of air pollutants from any source. Upon request of the Chief, the person responsible for the source to be tested shall provide necessary ports in stacks or ducts and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission of air pollutants.

B. RECORD KEEPING AND REPORTING

1. The owner or operator of any stationary source in the CNMI shall, upon notification from the Chief, maintain records of the nature and amounts of emissions from such source and/or any other information as may be deemed necessary by the Chief to determine whether such source is in compliance with applicable emissions limitations or other requirements.
2. The information recorded shall be summarized and reported to the Chief, on forms furnished by the Chief, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1-June 30 and July 1-December 31, except that the initial reporting period shall commence on the date the Chief issues notification of the record-keeping requirements.
3. Information recorded by the owner or operator and copies of the summarizing reports submitted to the Chief shall be retained by the owner or operator for two years after the date on which the pertinent report is submitted.
4. Emission data obtained from owners or operators of stationary sources will be correlated with applicable emission limitations and other requirements and will be made available to the public during normal business hours at the Division.

C. SHUTDOWN OF AIR POLLUTION CONTROL EQUIPMENT REPORT

In case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the Chief at least twenty-four hours prior to the planned shutdown. Such prior notice shall include, but is not limited to the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit number.

2. The expected length of time that the air pollution control equipment will be out of service.
3. The nature and quantity of emissions of air pollutants likely to be emitted during the shutdown period.
4. Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period.
5. The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

D. AIR POLLUTION CONTROL EQUIPMENT FAILURE REPORT

1. In the event that any emission source, air pollution control equipment, or related facility breaks down in such a manner as to cause the emission of air pollutants in violation of applicable rules and regulation, the owner or operator of such equipment shall immediately notify the Chief of such failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Chief shall also be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation.

PART IX

FEEES

A. PAYMENT IN FULL

1. The Chief shall not initiate any action authorized by these rules and regulations which requires a fee prior to receipt of full payment of such fee.

B. REQUIRED FEES

1. Fees shall be as determined by the Chief in accordance with individual cost accounting principles. In no case shall the Chief charge and collect a fee less than \$25.00 unless otherwise stated. Any CNMI or Federal government agency shall be exempt from paying any fee prescribed herein.
2. Fees shall be required for the following:
 - a. Filing Fee for each application for a Permit to Construct and Operate;
 - b. Where an application is filed for a Permit to Construct and Operate any new source by reason of an alteration or addition and where a Permit to Construct and Operate has been granted,
 - c. Where an application is filed for Permit to Construct and Operate by reason of a transfer from one person to another, and no alteration, addition, or transfer of location has been made.
 - d. Where an application is filed for a Permit to Construct and Operate by reason of transfer from one location to another permanent location, and no alteration, addition, or transfer of person has been made.
 - e. Where a request for a duplicate Permit to Construct and Operate is received by the Chief within 10 days after the destruction, loss or defacement of the permit. Such fee shall be \$5.00.
 - f. Registration for each type of existing or new source or modification.
 - g. Variances

PART X

PUBLIC PARTICIPATION

A. AVAILABILITY OF INFORMATION

1. Prior to approval of an application to Construct and Operate for a major siting, the Chief shall make available on the island which is the site of the proposed source or modification, a copy of the preliminary determination and a copy or summary of other materials, if any, considered in the preliminary determination.

B. PUBLIC NOTICE

1. The Chief shall notify the public of a major siting by advertisement in a newspaper of general circulation on the island in which the proposed source would be constructed or modified, of the application, the preliminary determination, the degree of increment consumption, that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment during a minimum period of 30 days.
2. The Chief shall send the notice of public comment to the applicant and to officials and agencies having cognizance over the location where the proposed action would occur.

C. PUBLIC HEARING

1. The Chief shall provide an opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, the control technology required, and other appropriate considerations.

D. AVAILABILITY OF RESULTS

1. The Chief shall make all comments and the notice of final determination available for public inspection in the same location where preconstruction information was made available.

E. OTHER REQUIREMENTS

1. The Chief shall notify the public on a regular basis of instances or areas in which any primary standard was exceeded during any portion of the preceding calendar year.
2. The Chief shall advise the public of any health hazard associated with such an exceedance of a primary standard.
3. The Chief shall increase the public awareness of measures which can be taken to prevent a primary standard from being exceeded, and ways in which the public can participate in regulatory and other efforts to improve air quality.

A. Administrative Order

The Chief of the Division, shall have the power to issue any necessary order to enforce these regulations and any term of a permit granted pursuant to these regulations. Such order may require that any person violating such provision or term cease and desist from such violation immediately or within a stated period of time, and may require that such person take such mitigating measures as may be necessary to reverse or reduce any significant adverse effect of such violation. Such order may apply to any person in addition to the violator when necessary to protect the public health or welfare.

B. Injunctive Relief

At the request of the department, the Attorney General shall institute a civil action in the Commonwealth Trial Court for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of these regulations order issued under these regulations, or any term of a permit granted pursuant to these regulations.

C. Penalties and Damages

1. Penalties and damages any person who fails to comply with any provision of these regulations or any order issued under these regulations or any term of a permit granted pursuant to these regulations after notice of the failure and the expiration of any reasonable period allowed for corrective action shall be liable for a civil penalty of not more than \$1,000 for each day of the continuance of such failure.
2. A person shall be liable for an additional penalty for any amount expended by any agency of the Commonwealth in taking any necessary action to reverse or reduce any significant adverse effect of the failure when the person is unwilling or unable to do so.
3. If appropriate, any permit granted to a person pursuant to these regulations may be revoked, suspended, or modified. The Director may assess, collect, compromise any penalty.
4. Any person who knowingly and willfully -
 - (a) violates any provision of these regulations or any order issued under these regulations, or any term of a permit granted pursuant to these regulations;
 - (b) makes any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under these regulations; or
 - (c) falsifies, tampers with, or renders inaccurate any monitoring device or method of record required to be maintained under these regulations, shall, upon conviction, be punished by a fine of not more than \$50,000, or by imprisonment for not more than one year, or both. Each day that a violation under clause (a) of this subsection continues, or each day that any device or method of record remains inaccurate or inoperative because of any activity described in clause (c) of this subsection, shall constitute a separate violation.
5. Whenever a corporation or other entity is subject to prosecution under subsection (4) of this section, any officer or agent of such corporation or entity who knowingly and willfully authorized, ordered, or carried out the prescribed activity shall be subject to the same fines or imprisonment, or both, as provided for under such subsection.

6. The remedies and penalties prescribed in this action shall be concurrent and cumulative, and the exercise of one shall not preclude the exercise of the others, and such remedies and penalties shall be in addition to any other remedy or penalty afforded by any other law or regulation.

D. Hearings and Appeals

1. No penalty shall be assessed pursuant to Section XXIII(C) of these regulations until the person charged with violation has been given an opportunity for a hearing before the Chief or a person designated by the Chief for that purpose; provided, however, that in emergencies the Chief may summarily suspend a permit pending proceedings under this subsection.
2. Appeals from and judicial review of any adverse administrative action or decision under this Act shall be conducted as otherwise provided by law.

E. Right of Entry

1. As a condition for the issuance and continuation of any permit granted under these regulations, the holder of a permit shall allow prompt access to the premises covered by the permit to the Chief or his authorized representative for the purpose of inspecting the premises for compliance with the terms of the permit. The inspection may be made with or without advance notice to the permit holder, with good purpose, at the discretion of the Chief, but shall be made at reasonable times unless an emergency dictates otherwise.
2. The Chief or his authorized representative may, with the consent of the owner or occupant, enter upon any property for the purpose of carrying out his duties under this Act.
3. If the Chief has probable cause to believe a violation of these regulations or any order issued under these regulations, or any term of a permit granted that these regulations has occurred or is imminent, or if it is necessary to permit the Chief to perform his duties under this Act, the Chief shall apply to the Commonwealth Trial Court or the District Court for the Northern Mariana Islands for an order or warrant to enter upon and search any property, take necessary samples or readings therefrom, seize evidence found therein and examine or impound any book or record found therein or specified in such order or warrant.
4. The Chief or his authorized representative may enter upon any property for the purpose set forth in subsection (3) of this section without an order or warrant if he has probable cause to believe;

- (a) that a violation described in the subsection has occurred or is imminent;
- (b) that the violation poses a serious, substantial, and immediate threat to the public health or welfare; and
- (c) that the delay in obtaining a court order or warrant would prolong or increase the threat, or would prevent, hinder, or delay the discovery of evidence of the violation or the taking of any necessary mitigating or remedial measure.

PART XII

SEVERABILITY

Should any section, paragraph, sentence, clause, phrase or application of these rules and regulations be declared unconstitutional or invalid for any reason by competent authority, the remainder or any other application of these rules and regulations shall not be affected thereby.

PART XIII

EFFECTIVE DATE

The effective date shall be immediately upon adoption of these regulations by the Division of Environmental Quality; provided that, for the date by which modification to existing sources shall have occurred not later than 18 months from the adoption date of these regulations.

PART XIV

CERTIFICATION

The undersigned hereby certifies that these regulations have been officially promulgated and adopted as final regulations pursuant to the authority contained in the Commonwealth of the Northern Mariana Islands Public Law 3-23.