§ 19-0311. Operating permit program for sources subject to federal Clean Air Act.

1. The department shall establish an operating permit program for sources subject to Title V of the Act. Upon approval of such program by the administrator, the following sources of regulated air contaminants, hereinafter referred to as "sources", shall obtain an operating permit pursuant to this section:

a. major stationary sources;

b. any source, including an area source, subject to a standard, limitation or other requirement under section 7412 of the Act, except that a source is not required to obtain an operating permit pursuant to this section solely because it is subject to regulation under section 7412(r) of the Act;

c. sources subject to a standard, limitation or other requirement under section 7411 of the Act;

d. affected sources pursuant to Title IV of the Act; and

e. any source in a source category designated by the commissioner in regulation, which shall be the same as the list of sources promulgated by the administrator pursuant to the Act.

2. In implementing this section, the department shall:

a. review and revise, as necessary to be consistent with the Act and other applicable federal and state laws, existing regulations to provide for adequate, streamlined and reasonable procedures for processing permit applications, for public notice and participation, including offering an opportunity for public comment and hearing, and for expeditious review of permit actions, including applications, renewals and revisions;

b. notwithstanding the provisions of paragraph i of this subdivision,

establish regulations for a phased schedule for acting on complete permit applications. Such schedule shall ensure that at least one-third of such permits shall be acted upon by the department annually over a period of three years after the administrator approves the operating permit program;

c. promulgate regulations, consistent with the Act and other applicable federal and state laws, for expeditiously determining whether an application for a permit is complete. Such regulations shall specify that, in order to be deemed complete, an application shall include:

(i) source identification information;

(ii) a description of the source's processes and products by Standard Industrial Classification Code, including any associated with alternate scenarios identified by the source;

(iii) an identification and description of emissions and emission points, including rates of such emissions in sufficient detail to establish the basis for the fees and applicability of requirements of the Act;

(iv) an identification of pollution control activities and compliance monitoring devices or activities;

(v) any limitations on operations or any work practice standards;

(vi) any calculations on which the information provided to the department is based;

(vii) citation and description of all applicable requirements in state and federal law;

(viii) a description of or reference to any applicable test method for determining compliance with applicable requirements;

(ix) information determined necessary by the department to define alternative operating scenarios identified by the permit applicant;

(x) compliance plans;

(xi) schedules of compliance;

(xii) schedules for submission of certified progress reports;

(xiii) a compliance certification;

(xiv) completed forms as required under Title IV of the Act;

(xv) certification by a responsible official that the information submitted is true, accurate and complete; and

(xvi) any other information required by the Act or other applicable

federal or state laws and implementing regulations. Provided, however, that applications for permit revisions need contain such information only to the extent required by the Act or regulations promulgated thereunder.

d. determine, consistent with subdivision 3 of section 70-0117 of this chapter, whether an application is complete within sixty days of receipt, provided that if the department does not make such determination within sixty days, the application is deemed complete. If the department deems the application to be incomplete, the department must, consistent with subdivision 1 of section 70-0109 of this chapter, provide a written explanation of any deficiencies found in the application;

e. provide for issuance, after notice and opportunity for public comment, of a general permit covering numerous similar sources for purposes of complying with Title V of the Act or this article. Such regulations shall ensure that the general permit complies with all requirements applicable under the Act and this chapter and identified criteria by which sources may qualify for such general permit. Notwithstanding subdivision five of this section, the source shall be subject to enforcement action for operation without a permit if the source is determined not to qualify for the conditions and terms of the general permit. Such regulations shall require that any source proposing to operate pursuant to a general permit shall request such permit in writing, and the department shall respond to such request in writing within sixty days;

f. provide that a single permit will be issued for each source, except upon request of a source. In no case shall the determination of whether a source is subject to the requirement to obtain an operating permit pursuant to this section be affected by the application for or issuance of more than one operating permit for that source. In no case shall a source which has been issued multiple permits be allowed to make minor modifications which, in the aggregate, would be a significant modification if the source had been issued a single permit, unless such source complies with all of the requirements for a significant

modification;

g. provide for issuance of a single permit authorizing emissions from similar operations at multiple temporary locations, provided that such permit shall not be issued unless it includes conditions that will ensure compliance with the requirements of this chapter and the Act at all authorized locations and unless it requires the owner or operator to notify the department in advance of each change in location;

h. establish provisions for notifying each state which is within fifty miles of a source that has submitted an application for an operating permit. Such notifications shall be consistent with section 7661d of the Act and Article 70 of this chapter and the state administrative procedure act;

i. take final action on a permit application within eighteen months after the date of receipt of a complete application. Notwithstanding any other provision of law, in the event the department fails to act on a complete permit application or a complete permit renewal application within eighteen months, such failure shall be treated as a final agency action solely for the purpose of judicial review; and

j. require revisions to a permit to incorporate applicable requirements under the Act or state law if the remaining permit term is three years or more. If the permit term is three years or more or if the permit has been extended pursuant to paragraph b of subdivision five of this section, such revision shall be completed not later than eighteen months after promulgation of the applicable requirement.

k. provide an exemption from regulation with respect to volatile organic compounds for any bakery facility which (i) derives at least fifty percent of its revenues from retail sales on premises, or (ii) utilizes only batch ovens in its baking process. A "batch oven" shall be defined as a non-conveyor belt oven operating on a single baking cycle in which a determinate amount of product is cooked at one baking.

3. Operating permits issued pursuant to this section shall include the

following conditions:

a. emissions limitations or standards including standards established by the Act and this article, and references to the origin of and authority for each term and condition;

b. provisions for a fixed permit term, not to exceed five years, unless a shorter term is requested by the source or the department determines a shorter term is appropriate, except if a different term is required to comply with the Act;

c. provisions for detailed monitoring, recordkeeping and reporting, including requirements that records be kept for five years, and that monitoring records be submitted to the department at least every six months, provided, however, that, unless required by the Act, continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance;

d. A prohibition on emissions in excess of any allowances held by an affected source under Title IV of the Act;

e. terms and conditions, if requested by the source, for the trading of emissions increases and decreases within a facility, to the extent applicable requirements provide for such trading;

f. provisions for alternative operating scenarios where a source identifies such scenarios in its permit application for department approval, and where such scenarios are approved by the department;

g. provisions for emergencies beyond the control of the source; notwithstanding section 71-2109 of this chapter, an "emergency" shall mean any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, which situation requires immediate corrective action to restore normal operation and which causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the

emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error;

h. identification of the terms of the permit that are federally enforceable;

i. provisions for inspection, entry, monitoring, compliance certification and reporting to assure compliance with the permit terms and conditions;

j. unless inconsistent with the Act, provisions for confidentiality of proprietary information pursuant to subdivision two of section eighty-seven of the public officers law, and regulations promulgated thereunder;

k. provisions to allow an existing source to voluntarily make early reduction(s) in hazardous air pollutants, pursuant to section 7412(I)(5) of the Act, and provisions to establish emissions standards for hazardous air pollutants on a case-by-case basis pursuant to section 7412(d), (g) and (j) of the Act in the event the administrator fails to meet the deadlines established pursuant to section 7412(e) of the Act for the promulgation of such standards applicable to a source or source category;

l. provisions that no existing source that has installed best available control technology (as defined in section 7479(3) of the Act), or technology required to meet a lowest achievable emission rate (as defined in section 7501 of the Act), prior to the promulgation of a standard applicable to such source under section 7412(d) and (j) for the same pollutant (or stream of pollutants) shall be required to comply with such standard under this section until the date five years after the date on which such installation or reduction has been achieved, as determined by the department;

m. provision for a severability clause to ensure the continued validity of the various permit conditions in the event of a challenge to

any portion of a permit;

n. provisions to allow that, for any performance or emission standard or other requirement established for a source prior to the issuance of an operating permit, such permit may contain a compliance schedule requiring the source to achieve compliance as soon as practicable but not later than the time required by the Act or this article or regulations promulgated thereunder;

o. provisions requiring compliance with all conditions of the permit, and requiring that noncompliance be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application;

p. provisions allowing for changes within a source without requiring a permit revision provided that such changes are not modifications under Title I of the Act and the changes do not exceed the emissions allowable under the permit; provided, however, that the source must provide the department with written notification at least seven days in advance of the proposed changes;

q. provisions specifying the conditions under which the permit may be reopened and revised prior to the expiration, as prescribed by regulation, and providing that reopenings shall not be initiated before a notice of such intent is provided to the source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency; and

r. other conditions necessary to assure compliance with the Act and other applicable federal and state laws and implementing regulations.

4. a. The department shall provide adequate, streamlined, and reasonable procedures for expeditiously processing applications for minor permit modifications, as defined in regulations. Minor modifications may include those that:

(i) do not violate any applicable requirement of this article or the

Act;

(ii) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) do not require or change a case-by-case determination of an emission limitation or standard, or a source specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject to, including but not limited to federally enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I or emissions limitations approved pursuant to section 7412(i)(5) of the Act; or

(v) do not constitute a modification under Title I of the Act.

b. Upon application by a source for a minor permit modification, the department shall determine whether such application is complete within fifteen days after receipt of such application and whether such proposed modification is minor within twenty-five days after receipt of such application. The department may require public notice of such application and the department's determination of whether the modification is minor. If such modification is deemed minor, the source may proceed with the modification. The department shall approve or deny a minor permit modification within ninety days of the receipt of an application under this subdivision or fifteen days after the end of the administrator's forty-five day review period pursuant to section 7661d(b)(1) of the Act, whichever is later, unless such modification is treated as a new application. The provisions of subdivision five of this section are not applicable to minor modifications until the source receives the final approval from the department.

5. a. The department shall include in a permit issued pursuant to this section a provision stating that compliance with the conditions of the permit shall be deemed compliance with the applicable requirements of the Act as of the date of permit issuance, provided that:

(i) such applicable requirements are specifically identified in the

permit; or

(ii) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof. Provided further that nothing herein shall preclude the department from revising or revoking the permit pursuant to article seventy of this chapter or from exercising its summary abatement authority under sections 71-0301 or 71-1719 of this chapter.

b. Consistent with section four hundred one of the state administrative procedure act, the terms and conditions of a permit are automatically continued pending final determination by the department on a request for renewal or initial application for an operating permit, provided a permittee has made a timely and complete application and paid the fees pursuant to section 72-0303 of this chapter.