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Administrative Developments

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ADMINISTRATIVE DEVELOPMENTS

THE REORGANIZATION OF SOUTH CAROLINA ENVIRONMENTAL AGENCIES

The South Carolina State Reorganization Act¹ became effective on July 1, 1994. The agencies were restructured to streamline the environmental permitting process and avoid duplication of effort. The following is a list of changes within the South Carolina agencies concerned with environmental protection and permitting:

The State Reorganization Act merged the regulatory functions of the Water Resources Commission and Land Resources Commission as follows:

The Stormwater, Dam Safety, Interbasin Transfer and Navigable Waters Programs are now within the Bureau of Water Pollution Control.
Contact: Russ Sherer, Bureau Chief.
Phone: 803-734-5236

The Capacity Use and Water Use Reporting Programs were merged into the Bureau of Drinking Water Protection.
Contact: Joe Rucker, Assistant Bureau Chief
Phone: 803-734-5310

The former Coastal Council was merged into the Department of Health and Environmental Control (DHEC) as the Coastal Division of the S.C. DHEC.² The new division is called the DHEC Office of Ocean and Coastal Resource Management (OCRM).
Contact: H. Wayne Beam, Deputy Commissioner
Phone: 808-787-0880

¹ See, S.C. Code Ann. § 48-39-10 (Law. Co-op. Supp 1994).

² *Id.* at § 48-39-35.

The Mine Safety Division of Land Resources was merged into DHEC's Bureau of Solid and Hazardous Waste within the Office of Environmental Quality Control.

Contact: Hartsill Truesdale, Bureau Chief

Phone: 803-896-4000

The non-regulatory functions of Land Resources and Water Resources were combined with the former Wildlife and Marine Resources Department, the S.C. Geological Survey and the Migratory Water Fowl Committee to form the new Department of Natural Resources.

Contact: Dr. James A. Timmerman, Jr., Director

Phone: 803-734-3888

**TEMPORARY OPERATING PROCEDURES
FOR THE
ADMINISTRATIVE LAW JUDGE DIVISION**

I. GENERAL PROVISIONS

A. PERTINENT DEFINITIONS

1. Agency means a state agency, department, board or commission whose action is the subject of a contested hearing, an appeal heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge (ALJ).
2. Appeal means the review conducted by an ALJ of an agency decision on the record established in the agency and any additional evidence presented to the ALJ pursuant to the Administrative Procedures Act.
3. Contested Case means a proceeding, including but not restricted to rate making, price fixing and licensing, in which the legal rights, duties and privileges of a party are required by

law to be determined by an agency after an opportunity for a hearing.

4. Division means the ALJ Division.

B. TIME

1. Computation: In computing any period of time which is prescribed or allowed by the rules, court order or statute, **the day of the act or event** does not count as a part of the designated time period to run. However, the last day of the period does count unless it is a weekend day, State or Federal holiday in which case the time period will extend to the end of the next business day. A half holiday will count as a full day. For time periods that last seven (7) days or less neither Saturday nor Sunday will be counted in the computation of days.

The ALJ may extend or shorten the time to take action, except where it is otherwise limited by law.

2. Service by Mail: If a party receives service by mail they shall be given an additional five (5) days to the prescribed period to act.³

C. FILING

1. Filing: The date of filing is the date of delivery to the clerk of the division or the date of mailing in the U.S. mail, properly addresses to the clerk, with sufficient first class postage attached. Once notice is delivered to the Agency and Division

³ The method of calculating time in Rule 6(a) and 6(e) of South Carolina Rules of Civil Procedure is adopted. However, Rule 6(b) - extension of the service period to ten (10) days - was not adopted but an extension of five (5) days was implemented to add to the prescribed time period.

the Agency is responsible for getting all official records to the ALJ Division.⁴

D. SERVICE

Whatever is filed with the division shall be served by mail or delivery upon all parties in the proceeding to their last known address.

II. CONTESTED CASE

A. GENERAL PROCEDURES

1. Simplification of Procedures: The ALJ has complete control over the prehearing procedures and exchanges so to simplify matters. The ALJ may consider parties comments during scheduling conferences, which can be held over the telephone, and issue the appropriate orders regarding prehearing procedures.⁵ The ALJ may also assist *pro se* litigants and litigants unfamiliar with administrative actions to insure the rights of all participants are protected.
2. Request for a Contested Case Hearing: File with the agency with subject matter jurisdiction. The request must name the party requesting the hearing, provide enough information to identify the prior hearing and state the relief requested.
3. When the agency is requesting the hearing, they are responsible for transmitting the request for the contested hearing to the division and for notifying by service the other

⁴ The Division maintains the record until the ALJ issues a final order about the matter.

⁵ The ALJ may dispense of prehearing procedures if the ALJ deems them unnecessary.

party and must comply with § 1-23-570 for information required.

4. After receipt of the notice for hearing, the division shall within thirty (30) days set the date, time, place, the purpose of the hearing and the ALJ assigned to the case.

III. PREHEARING PROCEDURES

A. SCHEDULING CONFERENCES

After the case has been assigned, the ALJ shall proceed by taking the necessary steps such as pleadings, amendments, discovery experts and entertaining settlement. Concurrent with Rule 16 of the SCRCPP.

1. Pleadings - filed within thirty (30) days after receipt of notice. Answers filed within thirty (30) days of petition and shall assert affirmative defenses. Defenses known by the party not raised may be deemed waived.
2. Motions - to be made ten (10) days before the hearing.
3. Intervention - is based on the civil rules and allows the intervenor's participation to be limited, the rules encourage early joinder and require good cause.
4. Discovery - Provided by § 1-23-320 and Rules 26-37 of the SCRCPP. Rules for Interrogatories are in Rule 33(b). Rule 30 allows only three (3) depositions per party. Rule 36 permits ten (10) Requests to Admit per party.
5. Default - ALJ may dismiss the case for default.

IV. HEARING PROCEDURES

- A. **EVIDENCE** - Section 1-23-330 of the Administrative Procedure Act, governs all evidence.
- B. **PRE-HEARING CONFERENCES** - ALJ can hold them before the hearing to obtain stipulations, to rule on admissibility of evidence and to identify matters for judicial notice.
- C. **ORDER OF PROCEEDING FOR CONTESTED CASES**
 - 1. The ALJ shall give an opening statement briefly describing the nature of the proceeding;
 - 2. The parties shall present their opening statements;
 - 3. The party with the burden of proof shall present their evidence first and the other parties may cross examine;
 - 4. After the initial party presents their evidence the other party is allowed to present their evidence;
 - 5. Both parties will then be allowed to present final arguments;
 - 6. The ALJ may require the parties to submit briefs that can contain proposed findings of fact and conclusions of law; and
 - 7. The decision shall be issued by the ALJ in written form and shall include findings of fact and conclusions of law based only on the record of the contested case;

V. MATTERS HEARD ON APPEAL FROM FINAL DECISION OF CERTAIN AGENCIES

A. NOTICE

Notice of appeal from the final decision of the agency shall be filed at the proper division within thirty (30) days of the agencies decision to the ALJ and a notice must also be served on each party and agency involved.

B. STAY

The notice of appeal shall stay the final decision of the agency unless the effect of filing an appeal is otherwise established by statute. However, any party may go to the ALJ and apply for an order regarding the effect of the appeal an the agency decision.

C. BRIEFS

1. PRINCIPAL AND REPLY BRIEFS

- a) The party filing the appeal shall file three (3) copies of its brief within fifteen (15) days of filing the appeal. The brief is limited to thirty (30) pages.
- b) The party filing the responsive brief shall file three (3) copies within fifteen (15) days. The brief is limited to thirty (30) pages.
- c) The party filing a reply brief may file an additional brief replying to the responsive brief within ten (10) days thereafter. This brief is limited to ten (10) pages.

2. CONTENT OF BRIEFS

Each brief shall contain a statement of the issues on appeal, a statement of the case, the argument, the conclusion and a certification of service.

3. SERVICE OF BRIEF

At the time of filing the brief with the division, one (1) copy of the brief and any appendix shall be served on each party to the appeal.

VI. REGULATION HEARING PROCEDURES

A. REQUEST FOR HEARING ON PROPOSED REGULATION

1. Request for Hearing on Proposed Regulation:

The agency requesting the hearing needs to file with the appropriate clerk a copy of the drafting notice, the date of the proposed publication of the notice, and a suggested time and date for the hearing. The Chief ALJ shall assign the case within five (5) days to the presiding ALJ who will in turn notify the agency within five (5) days as to when the hearing is scheduled.

B. DOCUMENTS TO BE PRE-FILED WITH THE DIVISION

1. At least ten (10) days before the date scheduled for the hearing, the agency shall provide a statement confirming the need of the hearing on the basis that the request for a hearing was made by twenty-five (25) persons, a governmental subdivision or agency, or an association having not less than twenty-five (25) members.

2. Agency statement of need and reasonableness:

An agency desiring to adopt a regulation shall prepare and pre-file, not later than ten (10) days before the hearing, the full text of the proposed regulation, a statement of need and reasonableness, and the statement must contain a summary of the anticipated evidence and arguments which will be presented by the agency to the ALJ at the hearing.

C. POWERS OF ADMINISTRATIVE LAW JUDGE (ALJ)

1. The ALJ can do anything necessary to provide for a fair and economical hearing.

D. ORDER OF PROCEEDINGS

1. All hearings are to be held pursuant to section 1-23-111 and shall proceed substantially in the following manner:
 - a) Registration of Participants: All persons who are involved shall register with the ALJ.
 - b) Notice of Procedure: The ALJ shall explain how he intends to proceed with the hearing, when the record will be closed, if any written statements of materials shall be accepted after the hearing and how long the time period will be extended but no longer than twenty (20) days after the hearing ends.
 - c) The Agency Will Present First: The agency shall make its showing of the need and the reasonableness of the regulation as well as present any other evidence it considers necessary to fulfill all statutory or regulatory requirements.
 - d) Opportunity for Questions: Interested persons shall be given an opportunity to ask the agency representatives questions, and the representatives can in turn ask them questions.
 - e) Evidence: Interested persons can present evidence regarding the proposed regulation.

- f) Written Materials from Interested Parties: The ALJ may permit interested persons to submit written materials after the close of oral testimony.
- g) The Report of the ALJ: The ALJ shall submit a written report with findings as to the need and reasonableness of the proposed regulation and may suggest modifications to the proposed regulation.

Robert M.P. Masella

TITLE V OPERATING PERMIT PROGRAM

I. INTRODUCTION

The 1990 Clean Air Act Amendments¹ adopted by the 101st Congress are nearly ten times as long as the original Clean Air Act (CAA) and call for more than one hundred seventy-five new regulations, over thirty guidance documents, over thirty-five studies and reports and more than fifty (50) new research and investigation initiatives.² The Amendments establish procedures for "listing, plan-preparation, exception-seeking and rule-making."³ The major changes to the CAA emphasize non-attainment, mobile sources, hazardous air pollutants, acid deposition, permits, ozone protection and enforcement.⁴

¹ Pub. L. No. 101-549, 104 Stat. 2399 (Nov. 15, 1990).

² William H. Rodgers, Jr., *Environmental Law, Air and Water* § 3.2, at 140 (2d ed. 1994).

³ *Id.* at 141.

⁴ *Id.* at 148.

The focus of this Note is the Title V Operating Permit Program. Pursuant to Title V of the CAA, the U.S. Environmental Protection Agency (EPA) promulgated new Part 70 of Chapter I of Title 40 of the Code of Federal Regulations (CFR), establishing regulations for state operating permit programs.⁵ The permit program is critical to the success of the air pollution legislation because the contents of each permit specify the legal obligations of both the source and the permitting authority.⁶ The addition of the permit program has made the CAA more consistent with other environmental statutes with permit requirements, such as the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA).⁷

The CAA makes it "unlawful" for any "person" to violate "any requirement of a permit" or "to operate" a covered source "except in compliance with a permit issued by a permitting authority" under the Act.⁸ The CAA presumes that discharges of air pollutants are unlawful and a source can overcome the presumption only by establishing the existence of a valid permit.⁹

The Amendments did leave important issues, such as permit revisions, EPA review, exemptions and the relationship between the permits and the State Implementation Plans (SIPS) to be resolved by the EPA in its rulemaking.¹⁰ The EPA dealt with those issues when it promulgated 40 C.F.R. Part 70. Primarily, the permit program serves to integrate the many permit provisions scattered throughout the CAA, and it consolidates the requirements applicable to particular sources; the integration and

⁵ 57 Fed. Reg. 32,250-51 (July 21, 1992) (Preamble to Final Rule).

⁶ Rodgers, *supra* note 2, at 148.

⁷ 57 Fed. Reg. 32,250-51 (1992).

⁸ Rodgers, *supra* note 2, at 149.

⁹ *Id.*

¹⁰ *Id.* at 148-49.

consolidation serves to increase source accountability and improve enforcement capabilities.¹¹

The Part 70 regulations have been designed to avoid disrupting the existing state programs.¹² Section 116 of the CAA allows a state to adopt any standard or requirement pertaining to air pollution so long as it is not more lenient than the federal limitation.¹³ In other words, states are entitled to establish additional permit requirements that are not inconsistent with the CAA.¹⁴

Some issues that the EPA and the states are continuing to sort out include but are not limited to the following: state permit programs; permit submission and approval; notification; review of permit applications; judicial review; enforcement; emissions trading; permit modification and renewal; monitoring; and reporting.¹⁵

A particular complexity of the CAA is the definition of "source," which can mean an entire facility or a source within a facility; thus, one facility may be responsible for many sources, each of which may require its own permit. In most cases, however, a facility will have only one permit because Title V attempts to place all requirements for a facility into one single document.¹⁶ Permits generally contain emissions limitations, compliance schedules, monitoring requirements, and compliance certification requirements.¹⁷

¹¹ *Id.* at 150.

¹² *Id.* at 151 (*citing* 56 Fed. Reg. 21,713 (1991)).

¹³ 42 U.S.C. § 7416 (1988).

¹⁴ 42 U.S.C. § 7661(e)(a) (1988 & Supp. V 1993).

¹⁵ Rodgers, *supra* note 2, at 153-54.

¹⁶ Craig A. Moyer & Michael A. Francis, *Clean Air Act Handbook: A Practical Guide to Compliance* at 5-2 (Clark Boardman Co. 1991).

¹⁷ *Id.*

II. SOURCES SUBJECT TO THE NEW PERMITTING PROGRAM

Standards established pursuant to Section 111¹⁸ and Section 112¹⁹ of the CAA after July 21, 1992, specify the instructions for Part 70 permitting. All major sources and some non-major sources will require Part 70 permits.²⁰

The numerous sources to which the Title V permit requirement applies include but are not limited to the following:

- Asphalt-Concrete Plants
- Asphalt-Processing & Roofing
- Auto & Light-Duty Truck Surface Coating
- Beverage Can Surface Coating
- Bulk Gasoline Terminals
- Cement Plants
- Electric Utility Steam Generating
- Flexible Vinyl & Urethane Coating & Printing
- Glass Manufacturing
- Grain Elevators
- Incinerators
- Kraft Pulp Mills
- Large Appliance Industrial Surface Coating
- Lead-Acid Battery Manufacturing
- Magnetic Tape Coating
- Municipal Waste Combusters
- Petroleum Drycleaning
- Primary Aluminum Reduction
- Primary Copper Smelting
- Publication & Rotogravure Printing
- Rubber Tire Manufacturing

¹⁸ See 40 C.F.R. Part 60 (1994).

¹⁹ See 40 C.F.R. Parts 61 & 63 (1994).

²⁰ See 18 S.C. State Reg. (No. 5) 61-62.70.3(a) & (b) (1994).

- Sewage Treatment Plants
- Surface Coating (Metal Coil; Metal Furniture; Plastic Machines)
- Synthetic Fiber Production
- Wool Fiberglass Insulation Manufacturing²¹

This list also includes several indistinct industries such as gas stations, perchlorodethylene drycleaning facilities, auto body repair shops, commercial sterilization facilities, hard and decorative chromium electroplating facilities, shipbuilding and repair facilities, and wood furniture manufactories.²²

Implementing the Title V Operating Permit Program presents an opportunity for state and federal authorities to pursue strategies to avoid and eliminate pollution, rather than shift it from one medium to another.²³

III. STATE PERMIT PROCEDURES

Pursuant to the CAA Amendments²⁴ and the Part 70²⁵ permit requirements, the EPA has required the State of South Carolina to develop a new operating permit program for major stationary sources of air pollution.

A proposed regulation consistent with the requirements of Title V of the CAA was adopted by the South Carolina Board of Health and Environmental Control on September 9, 1993 and published in the *State Register* on September 24, 1993. On February 10, 1994, a revision to the regulation was adopted by the Board. The revision addressed general

²¹ 40 C.F.R. Parts 61 & 63 (1994).

²² Scott Miller, Environmental Engineer, EPA Region IV, Air, Pesticides & Toxics Management Division, Air Programs Branch; *see also* 40 C.F.R. Part 63 (1994).

²³ 57 Fed. Reg. 32,250-52 (1992).

²⁴ 42 U.S.C. § 7401 *et seq.* (1988 & Supp. V 1993).

²⁵ 40 C.F.R. Part 70 (1994).

permits, renewal and expiration of permits, administrative amendments, minor modifications, group processing, operational flexibility, off-permit changes, insignificant activities, deferral of permits for non-major sources, and permit shield provisions. This revision was ratified by the 1994 General Assembly and published in the *State Register* on May 27, 1994.²⁶

The revised regulation for the permit program was proposed to EPA for full approval in January, 1995.²⁷ The public comment period ended on February 23, 1995 and once the program is finalized, another thirty (30) day waiting period will begin. South Carolina's permitting authority must receive EPA approval for its permit program by November 14, 1995. Full approval is expected by April 1995.²⁸

A. Who Needs a Permit?

According to the revised regulation, each facility which has been identified as a major source is subject to the Title V operating permit requirements.²⁹ The regulation defines a major source as a particular source or installation that has the potential to emit in one of the following ways:

- (1) 100 tons per year (tpy) or more of any regulated air pollutant;

²⁶ The revised regulation will not become final until approved by the EPA. EPA's approval will establish the effective date of the regulation. Thereafter, the regulation will be incorporated into the South Carolina Air Pollution Control Regulations and Standards. 18 S.C. State Reg. (No. 5) 61-62.70 (1994)(to be codified at 24 S.C. Code Regs. 61-62).

²⁷ 60 Fed. Reg. 4583-86 (1995)(to be codified at 40 C.F.R. Part 70)(proposed Jan. 24, 1995).

²⁸ Rhonda Banks, Clean Air Act Implementation Section Manager, Air Quality Bureau, Department of Health & Environmental Control.

²⁹ 18 S.C. State Reg. (No. 5) 61-62.70.1 (1994).

- (2) 10 tpy or more of any one hazardous air pollutant which has been listed pursuant to Section 112(b) of the CAA;
- (3) 25 tpy or more of any combination of such hazardous air pollutants;
- (4) 50 tpy or more of carbon monoxide for carbon monoxide non-attainment areas;
- (5) For ozone non-attainment:
 - (a) 100 tpy or more volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate";
 - (b) 50 tpy or more in areas classified as "serious";
 - (c) 25 tpy or more in areas classified as "severe";
 - (d) 10 tpy or more in areas classified as "extreme".
- (6) 50 tpy or more volatile organic compounds for ozone transport regions established pursuant to Section 184 of the CAA; or
- (7) 70 tpy or more PM-10 (particulate matter) nonattainment areas.³⁰

The phrase "potential to emit" is defined as the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design.³¹ The requirement for a facility to submit a Title V application is based on its potential to emit, which does not include physical or operational limitations unless such limitations are federally enforceable.³²

³⁰ *Id.* at 61-62.70.2(r).

³¹ *Id.* at 61-62.70.2(y).

³² *Id.*

Until each source obtains a federally enforceable operating permit to limit their potential to emit, the South Carolina Department of Health and Environmental Control (DHEC) recommends that a facility calculate its potential to emit for both criteria pollutants and hazardous air pollutants using as a worst case scenario a source operating 8760 hours per year at its maximum capacity with uncontrolled emissions.³³ If a request is made in writing, DHEC will make applicability determinations as to whether a particular source or installation is subject to the permit requirements of the regulation.³⁴

B. Obtaining a Permit

Because all sources subject to these regulations must have a permit to operate,³⁵ it is pertinent that the owner or operator of a major source facility submit a timely and complete permit application to DHEC in compliance with Regulation 61-62.70.5.³⁶ An application is timely if it is submitted in one of the following manners:

- (1) For new sources - within 12 months after the source becomes subject to the permit program;
- (2) For existing sources - by an earlier date set by DHEC;
- (3) For renewing a permit - at least 6 months prior to expiration;

³³ Banks, *supra* note 28.

³⁴ 18 S.C. Reg. (No. 5) 61-62.70.3(e) (1994).

³⁵ Due dates for submitting permit applications range from May 15, 1995 to Mar. 16, 1996.

³⁶ It is highly urged that the applicant consult with DHEC prior to submitting an application.

(4) For phase II acid rain permits - sources must submit additional information by January 1, 1996 for sulfur dioxide and January 1, 1998 for nitrogen oxide.³⁷

An application is complete if it meets all the requirements of Regulation 61-62.70.5(c). Unless a complete application has been submitted, no source subject to Part 70 may continue to operate after the deadline for permit application submittal.³⁸

C. Application Requirements

DHEC's operating permit application is divided into nineteen (19) sections. A brief synopsis of each section is listed below:

Section A: Facility Profile

This section determines the applicability of the standard or requirement of the operating permit program.

Section B: Summary of Application Contents

This section will help determine if the application is complete; it serves as a checklist.

Section C: Emission Equipment Inventory

This section is used to list all exempt and non-exempt equipment that has the potential to emit any regulated air pollutants.

Section D: Relationship Between Non-Exempt Emission Units and Emission Points

This section is only used to provide a summarized relationship between the non-exempt emission units, equipment, and exhaust points associated with the emission units.

³⁷ 18 S.C. State Reg. (No. 5) 61-62.70.5 (1994).

³⁸ *Id.* at 61-62.70.7(b).

Section E: General Information

This section obtains general information for each non-exempt emission unit listed in Section D.

Section F: Relationship Between Non-Exempt Emission Units and Stacks, Vents, and Control Equipment Stacks

This section is used to identify the relationship between non-exempt units and stacks, vents, and control equipment stacks.

Section G: Relationship Between Control Equipment and Non-Exempt Emission Units

This section is used to identify and list all existing, active pollution control equipment for each emission unit.

Section H: Emission Data - NAAQS and Regulated Pollutants Not Listed in Section I

This section is used to show the emissions (based on the potential to emit) of each National Ambient Air Quality Standards (NAAQS) pollutants and regulated pollutants not listed in Section 112(b) of the 1990 Clean Air Act Amendments.

Section I: Emission Data - Air Toxics

This section is used to show the emission of each hazardous air pollutant listed in Section 112(b) of the 1990 Clean Air Act Amendments emitted from each emission unit described in Section D.

Section J: Relationship Between Non-Exempt Emission Units and Applicable Rules

This section identifies and lists all federal and state applicable requirements associated with each emission unit listed in Section D.

Section K: Compliance Plan or Schedule

This section identifies all emission units, as listed in Section J, in noncompliance with any federal or state regulations, and indicates the compliance plan or schedule to be followed.

Section L: Monitoring

This section provides a summary of all non-exempt emission units that are subject to monitoring as listed in Section J. All sources not subject to enhanced monitoring will be subject to periodic monitoring.

Section M: Record Keeping

This section provides a summary of all non-exempt emission units that are subject to record keeping as listed in Section J.

Section N: Reference Test Method

This section provides a summary of all non-exempt emission units that are subject to testing as listed in Section J.

Section O: Reporting

This section provides a summary of all non-exempt emission units that are subject to reporting as listed in Section J. Each source will report at least every six (6) months.

Section P: Compliance Certification

This section must be completed, one per application submittal.

**Section Q: Enhanced Monitoring & Compliance Certification
Requirement**

This section identifies and lists all emission units which must comply with 40 C.F.R. Part 64 (Enhanced Monitoring Program) and the methods which will be utilized to demonstrate compliance.

Section R: Exempt Emission Units

This section must be completed for any equipment or process emitting regulated air pollutants which are deemed exempt.

Section S: Operational Flexibility

This section must be provided for each alternate scenario listed in Section D.

D. EPA Forty-Five Day Review

Once an application has been submitted, DHEC has sixty (60) days to make a completeness determination and notify the applicant. DHEC will issue a draft permit which is subject to a thirty day review by the public and by affected neighboring states (i.e. North Carolina & Georgia). Thereafter, DHEC will issue a proposed permit and send to EPA a copy of the permit application along with the proposed permit,³⁹ after which the EPA has forty-five (45) days to review.⁴⁰ The EPA will either allow a final permit to issue or will veto the proposed permit.⁴¹ EPA's grounds for objection are limited: The proposed permit either fails to comply with CAA requirements or with the Title V procedural requirements.⁴²

DHEC cannot issue a final permit if the EPA objects within the forty-five (45) day period.⁴³ At this stage, DHEC has two choices:

- (1) It can revise the proposed permit and resubmit it within ninety (90) days for EPA review; or
- (2) It can take no action, and EPA can issue a permit directly to the source according to the federal permit program.⁴⁴

³⁹ Charles H. Knauss, Shannon S. Broome, & Michael E. Ward, *The Clean Air Act Operating Permit Program, A Handbook for Counsel, Environmental Managers & Plant Managers* (ABA Section of Natural Resources, Energy and Environmental Law, 1993).

⁴⁰ *Id.*

⁴¹ Miller, *supra* note 22.

⁴² Knauss, *supra* note 39, at 52.

⁴³ *Id.*

⁴⁴ *Id.*

Thus, if DHEC disagrees with the EPA, EPA can change the contested provision within the proposed permit and issue a final permit directly to the source.⁴⁵

If the EPA does not timely object to the proposed permit within the forty-five (45) day veto period, DHEC may issue a final permit either affirmatively or by default.⁴⁶

E. Permit Fees

Fees for DHEC's operating permits are based on an annual charge of \$25.00 per ton plus the Consumer Price Index (CPI) of each regulated pollutant based on actual emission, up to a maximum of 4,000 tons a year. Fees will be adjusted each year to reflect any increase in the CPI.⁴⁷

IV. CONCLUSION

The combination of federal and state efforts suggested by this Note are pertinent to the implementation of a successful Title V Operating Permit Program. This Note is provided for information and for planning purposes only; South Carolina's permit program has not yet become final. DHEC expects the effective date for approval of the permit program to be April 1995, making the due date for permit applications for existing sources April 1996, one year later.⁴⁸

M. Grace Giorgio
Cherie L. Rogers

⁴⁵ Miller, *supra* note 22. Such instances will likely be rare.

⁴⁶ Knauss, *supra* note 39, at 53.

⁴⁷ Banks, *supra* note 28.

⁴⁸ *Id.*

