

**SECTION 12.4: AUTHORITY TO CONSTRUCT APPLICATION AND PERMIT
REQUIREMENTS FOR PART 70 SOURCES**

12.4	AUTHORITY TO CONSTRUCT PERMIT REQUIREMENTS FOR PART 70 SOURCES.....	1
12.4.1	Authority to Construct Permit Required; Duration	1
12.4.1.1	Commencement of Construction: Timing Requirements.....	1
12.4.2	Definitions	1
12.4.2.1	Use of Terms	1
12.4.3	Authority to Construct Permit for Part 70 Sources	5
12.4.3.1	Application Submission, Processing and Issuance Requirements for Stationary Sources Subject to Sections 12.2 or 12.3.....	5
12.4.3.2	Application Submission and Processing Requirements for Part 70 Sources Not Subject to Section 12.2, Section 12.3, or Section 12.4.3.3	11
12.4.3.3	Application Submission and Processing Requirements for Construction or Reconstruction of a Part 70 Source Subject to a Standard under Sections 112(d), (f), or (h) of the Act (a MACT source).....	12
12.4.3.4	Authority to Construct Permit Revisions.....	12
12.4.3.5	Administrative Permit Revisions for Title IV Acid Rain Sources.....	14

12.4 AUTHORITY TO CONSTRUCT PERMIT REQUIREMENTS FOR PART 70 SOURCES

12.4.1 Authority to Construct Permit Required; Duration

12.4.1.1 Commencement of Construction: Timing Requirements

- (a) No person shall begin actual construction of a New Part 70 source, or modify or reconstruct an existing Part 70 source that falls within the preconstruction review applicability criteria, without first obtaining an Authority to Construct Permit from the Control Officer.
- (b) If a person commences the construction, modification, or reconstruction of a Part 70 source within eighteen (18) months after the date of issuance of an Authority to Construct Permit and construction is not discontinued for a period greater than twelve (12) months, and provided that a timely and complete Part 70 Operating Permit application is submitted pursuant to Section 12.5.2.1, the Authority to Construct Permit shall remain in effect until a Part 70 Operating Permit is granted or denied, or the modification or reconstruction is incorporated into a Part 70 Operating Permit through a permit revision.
- (c) Notwithstanding the provisions of paragraph (b) of Section 12.4.1.1, if an existing Part 70 Operating Permit would prohibit such construction or change in operation, the source must obtain a Part 70 permit revision pursuant to Section 12.5.2.14 before commencing operation.

12.4.2 Definitions

12.4.2.1 Use of Terms

The following definitions apply to terms used in Section 12.4. Unless the context requires otherwise, the following terms shall have the meanings set forth for the purposes of Section 12.4. When a term is not defined, it shall have the meaning provided in Section 0, 40 CFR 70.2, the Act, or common usage, in that order of priority.

- (a) “Existing Part 70 source” means a Part 70 source that either has a valid Part 70 Operating Permit issued prior to the effective date of Section 12.4 or has an application for a Part 70 Operating Permit deemed complete prior to the effective date of Section 12.4.
- (b) “Minor NSR significant levels” means an increase in the potential to emit that equals or exceeds the following rates for the pollutants listed:

Type of Air Pollutant	Potential to Emit (tpy)
PM _{2.5} , directly emitted	5.0
PM ₁₀	7.5
CO	50
VOC	20
NO _x	20
SO ₂	20
Lead (Pb)	0.6
H ₂ S	5
Total Reduced Sulfur (including H ₂ S)	5

- (c) "Modification" or "Modify" means a project which meets any of the preconstruction review applicability criteria in paragraph (e) of Section 12.4.2.1 or that requires a minor or significant permit revision pursuant to Section 12.5.2.14.
- (d) "New Part 70 source" means a Part 70 source that is not an existing Part 70 source.
- (e) "Preconstruction review applicability criteria" means any of the following:
- (1) At an existing major stationary source, a project that will result in a "major modification" as defined in Sections 12.2 or 12.3;
 - (2) A new Part 70 source or a modification to an existing Part 70 source that is subject to Section 12.4.3.2;
 - (3) Any project that is subject to a standard, limitation, or other requirement under 40 CFR Part 60;
 - (4) Any project that is subject to a standard under 40 CFR Part 63, including, but not limited to, construction or reconstruction that requires preconstruction review under 40 CFR § 63.5; or
 - (5) For a solid waste incineration unit, a project that will result in a modification for purposes of Section 129(g)(3) of the Act.
- (f) "Project" means a physical change in, or change in the method of operation of, a Part 70 source.

For purposes of this definition, a physical change or change in the method of operation shall not include:

- (1) Routine maintenance, repair, and replacement.

- (2) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.
- (3) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act.
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- (5) Use of an alternative fuel or raw material by a stationary source which:
 - (A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51 Subpart I; or
 - (B) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I.
- (6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 51.166.
- (7) Any change in ownership at a stationary source.
- (8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
 - (A) The Nevada State Implementation Plan and;
 - (B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.
- (9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to

emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

- (10) The reactivation of a very clean coal-fired electric utility steam generating unit.
- (g) “Responsible official” means one of the following:
 - (1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - (A) The operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million in second quarter 1980 dollars; or
 - (B) The delegation of authority to such representative is approved in advance by the Control Officer.
 - (2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
 - (3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this definition, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency; or
 - (4) For Title IV affected sources:
 - (A) The designated representative, as defined in 40 CFR 72.2, insofar as actions, standards, requirements, or prohibitions under Title IV of the Act, “Acid Deposition Control,” or the regulations promulgated there under are concerned; or
 - (B) The responsible official as defined above for any other purposes under Section 12.4.

12.4.3 Authority to Construct Permit for Part 70 Sources

12.4.3.1 Application Submission, Processing and Issuance Requirements for Stationary Sources Subject to Sections 12.2 or 12.3

(a) Application Requirements

An application for an Authority to Construct Permit shall be submitted on a form provided by the Control Officer. The application shall contain the following information related to the construction or project:

- (1) A description of all emissions of regulated air pollutants from all affected emissions units and a projected operating schedule for each emissions unit;
- (2) An identification and a description of all points of emissions and a process description of all activities, including design capacity, which may generate emissions of the regulated air pollutants described pursuant to paragraph (a)(1) of Section 12.4.3.1 in sufficient detail to establish the basis for the applicability of standards and fees;
- (3) The emission rates of all regulated air pollutants, including fugitive emission rates. The emission rates must be described in tons per year and for such shorter-term averages as are necessary to establish compliance using the applicable standard reference test method or other methodology specified in paragraph (a)(7) of Section 12.4.3.1;
- (4) A description of any new or modified air pollution control equipment to be operated at the stationary source;
- (5) The calculations on which the information described in Section 12.4.3.1 are based, including a fuel description and specifications;
- (6) Citations to and a description of all applicable requirements;
- (7) The applicable test method or other methodology used for determining compliance with each applicable requirement;
- (8) A control technology demonstration for RACT shall be submitted for a modification to an existing Part 70 source that requires an Authority to Construct Permit because: (i) the modification will increase the source's potential to emit by an amount that is equal to or greater than the minor NSR significant level in paragraph (b) of Section 12.4.2.1; (ii) a control technology demonstration is not otherwise required by Section 12.2 or 12.3; or (iii)

the modification will be major for one pollutant and will increase the source's potential to emit by an amount equal to or greater than the minor NSR significant level for one or more pollutants that are not part of or precursors to the pollutant associated with the major modification. The RACT control technology demonstration shall only apply to the pollutant(s) exceeding the minor NSR significant level. The application shall describe how RACT was determined and how compliance with RACT is to be measured, including, if applicable, material usage limits, performance testing, and continuous emissions monitoring.

- (9) If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols;
- (10) If applicable, the information necessary to establish a basic design parameter;
- (11) If applicable, a description of how the permittee proposes to comply with the compliance assurance monitoring requirements in 40 CFR Part 64, including a plan describing how the applicant will comply with the monitoring design criteria in 40 CFR 64.3; and
- (12) If any information or data in the application is proposed to be treated as confidential, a demonstration of compliance with the Certification of Confidentiality procedures in Section 12.6.1.
- (13) If the applicant wishes to be subject to the enhanced public participation procedures in Section 12.2.16.6, a declaration to that effect.

(b) **Additional Application Requirements for Sources Subject to Section 12.2 (Major Source PSD)**

If the new or modified Part 70 source is subject to the Prevention of Significant Deterioration preconstruction review provisions of Section 12.2, the application shall also contain the following:

- (1) The control technology review required by Section 12.2.9;
- (2) The source impact analysis required by Section 12.2.10;
- (3) The air quality analysis required by Section 12.2.12;
- (4) The source information required by Section 12.2.13;
- (5) The additional impact analyses required by Section 12.2.14; and

- (6) Any other information that the Control Officer determines is necessary to process the application in accordance with Section 12.2 or Section 12.3.

(c) **Additional Application Requirements for Sources Subject to Section 12.3 (Major Source Nonattainment NSR)**

If the new or modified Part 70 source is subject to the nonattainment area preconstruction review provisions of Section 12.3, the application shall also contain the following:

- (1) The statewide compliance demonstration required by Section 12.3.3;
- (2) The alternatives analysis required by Section 12.3.4;
- (3) The LAER demonstration and draft permit conditions required to ensure compliance with LAER required by Section 12.3.5.2;
- (4) An air impact analysis, including dispersion modeling;
- (5) The information necessary to demonstrate that the applicant has satisfied or will satisfy the emissions offset requirements in Section 12.3.6; and
- (6) Any other information that the Control Officer determines is necessary to process the application in accordance with Section 12.2 or Section 12.3.

(d) **Application Processing Procedures**

Any application for a new or modified Part 70 source subject to paragraph (a) of Section 12.4.3.1 shall be processed in accordance with the following procedures:

- (1) Within one hundred (100) days after the date of receipt of an application for an Authority to Construct Permit, the Control Officer shall determine if the application is complete. If substantial additional information is required, the Control Officer shall determine that the application is incomplete and return the application to the applicant. If substantial additional information is not required, the Control Officer shall determine the application to be complete.

Unless the Control Officer determines that the application is incomplete within one hundred (100) days after the date of receipt of the application, the official date of submittal of the application shall be deemed to be the date on which the Control Officer de-

termines that the application is complete or the 101st day after the date of receipt, whichever is earlier. Within one year after the date the application is determined to be complete, the Control Officer shall initiate the public participation procedures in Section 12.2.16.

- (2) If, after the date the application is determined to be complete, the Control Officer discovers that additional information is required to act on the application, the Control Officer may request additional information necessary to determine whether the proposed project will comply with all of the applicable requirements set forth in Section 12.2 or Section 12.3, as applicable. The applicant must provide in writing any additional information that the Control Officer requests within the time specified in the written request of the Control Officer. Any delay in the submittal of the requested information may result in a corresponding delay in the action of the Control Officer on the application or a determination of incompleteness.
- (3) The Control Officer shall not issue an Authority to Construct or Permit to Operate unless, after the date an application is determined to be complete, the Control Officer determines that the new or modified source will meet all applicable requirements of Section 12.

(e) **Permit Content**

An Authority to Construct Permit issued pursuant to Section 12.4 shall contain each of the following conditions:

- (1) The permittee shall retain records of all required monitoring and performance demonstration data and supporting information for five (5) years after the date of the sample collection, measurement, report, or analysis. Supporting information includes all records regarding calibration and maintenance of the monitoring equipment, all original strip-chart recordings for continuous monitoring instrumentation and, if applicable, all other records required to be maintained pursuant to 40 CFR 64.9(b).
- (2) Each of the conditions and requirements of the permit is severable and, if any are held invalid, the remaining conditions and requirements continue in effect;
- (3) The permittee shall comply with all conditions contained in the permit. Any noncompliance constitutes a violation and is grounds for:

- (A) An action for noncompliance;
 - (B) Revocation and reissuance or the termination of the permit by the Control Officer; or
 - (C) The reopening or revising of the permit by the permittee as directed by the Control Officer.
- (4) The need to halt or reduce activity to maintain compliance with the conditions of the permit is not a defense to noncompliance with any condition of the permit;
 - (5) The Control Officer may revise, revoke and reissue, reopen and revise, or terminate the permit for cause;
 - (6) The permit does not convey any property rights or any exclusive privilege;
 - (7) The permittee shall provide the Control Officer, within a reasonable time, with any information that the Control Officer requests in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the conditions of the permit. Upon request, the permittee shall also furnish to the Control Officer copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality;
 - (8) The permittee shall allow the Control Officer, or any authorized representative of the Control Officer, upon presentation of credentials, to enter the permittee's premises where the source is located or emissions related activity is conducted and to:
 - (A) Have access to and copy, during normal business hours, any records that are kept pursuant to the conditions of the permit;
 - (B) Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
 - (C) Sample or monitor substances or parameters to determine compliance with the conditions of the permit or applicable requirements; and
 - (D) Document alleged violations using devices such as cameras or video equipment.

- (9) A responsible official of the source shall certify that, based on information and belief formed after a reasonable inquiry, the statements made in any document required to be submitted by any condition of the permit are true, accurate, and complete;
- (10) The permit must contain:
- (A) All applicable requirements, emission limits, and standards, provided, however, that applicable requirements that are not required by the Act or implementing federal regulations, and that are not in the Nevada SIP, may be included in the permit but shall be specifically designated as being not federally enforceable and not enforceable by a citizen's suit pursuant to the Act, and shall be designated as "county only requirements." Terms and conditions so designated are not subject to the requirements that apply to permit review by EPA and affected states;
 - (B) Monitoring, recordkeeping, and reporting requirements sufficient to meet the requirements of 40 CFR Part 64 or paragraph (d) of Section 12.5.2.6, as deemed necessary by the Control Officer;
 - (C) Such other conditions as necessary to demonstrate compliance with the requirements in Section 12.2 or Section 12.3 for construction, subject to those sections.
 - (D) A condition that states that the approval of an Authority to Construct or Authority to Operate shall not affect the responsibility of the permittee to comply with the applicable requirements of the Nevada State Implementation Plan or any other applicable requirements.
- (11) The permittee shall maintain documentation of the records required by paragraph (a) of Section 12.2.1.6 or paragraph (a) of Section 12.3.1.6, if applicable.
- (12) The permittee shall report start of construction, construction interruptions exceeding nine (9) months, and completion of construction. The report shall be given to the Control Officer not later than fifteen (15) working days after occurrence of the event;
- (13) The permittee shall provide written notification of the actual date of commencing operation, received by the Control Officer, within fifteen (15) calendar days after such date;

- (14) The permittee shall provide separate written notification for commencing operation for each unit of phased construction, which may involve a series of units commencing operation at different times;
- (15) A source that is a new Part 70 source or a major modification to an existing Part 70 source shall, within sixty (60) days after achieving the maximum rate of production of the new source or modification, but not later than one hundred eighty (180) days after commencing operation, conduct performance tests and furnish the Control Officer a written report of the results of the tests. The Control Officer may require such testing to occur sooner than the 180-day limit if there are adequate grounds to do so. The performance tests required by the Authority to Construct Permit shall be conducted in accordance with the applicable test method and Section 12.8; and
- (16) The permittee shall post the permit in a location which is clearly visible and accessible to the facility's employees and representatives of the department.
- (17) The permittee shall pay all fees assessed pursuant to Section 18.

12.4.3.2 Application Submission and Processing Requirements for Part 70 Sources Not Subject to Section 12.2, Section 12.3, or Section 12.4.3.3

- (a) In order to obtain an Authority to Construct Permit, the owner or operator of a proposed new Part 70 source that is not subject to Section 12.2 or Section 12.3, or the owner or operator of an existing Part 70 source proposing a modification that increases the source's potential to emit by an amount equal to or greater than the minor NSR significant level in paragraph (b) of Section 12.4.2.1, but that is not a major modification under Section 12.2 or Section 12.3, shall submit an application on a form prescribed by the Control Officer.
 - (1) The application shall contain the information specified in paragraph (a) of Section 12.4.3.1 and a "Control Technology Review" that meets the requirements of Section 12.2.9, except that Reasonably Available Control Technology (RACT) shall be the technology standard instead of Best Available Control Technology. The RACT Technology Review shall be submitted for any pollutant for which the source's potential to emit increases by an amount equal to or greater than the minor NSR significant level, but less than the major source or major modification thresholds. The applicant shall also include a demonstration that the new Part 70 source or modification does not cause an exceedance of the ambient air quality standards as defined in Section 0 or

an exceedance of the ambient air increments specified in Section 12.2.3.

- (2) The determination of completeness and the procedures for processing the application shall be those in paragraph (d) of Section 12.4.3.1.
 - (3) The public participation procedures specified in Section 12.1.5.3 shall apply to a permit revision processed under Section 12.4.3.2(a).
 - (4) The contents of the Authority to Construct Permit issued pursuant to Section 12.4.3.2(a) shall be those in Section 12.4.3.1(e).
- (b) In order to obtain an Authority to Construct Permit, the owner or operator of an existing Part 70 source that is proposing a modification that increases the source's potential to emit by an amount less than the minor NSR significance level in paragraph (b) of Section 12.4.2.1 shall comply with the minor revision process listed in Section 12.5.2.14, including the application procedures listed in paragraph (a)(3) of Section 12.5.2.14.

12.4.3.3 Application Submission and Processing Requirements for Construction or Reconstruction of a Part 70 Source Subject to a Standard under Sections 112(d), (f), or (h) of the Act (a MACT source)

In addition to any other applicable application requirements in Section 12.4, if a new Part 70 source, or the reconstruction of an existing Part 70 source that creates a "new affected source" or "reconstructed affected source" that is a major source under 40 CFR Part 63, the owner or operator shall comply with the application requirements under 40 CFR 63.5 and paragraph (a) of Section 12.4.3.1. The Authority to Construct Permit for such source shall comply with the requirements in 40 CFR 63.5(e).

12.4.3.4 Authority to Construct Permit Revisions

- (a) An Authority to Construct Permit shall only be revised administratively or as a significant permit revision.
 - (1) An administrative permit revision is a permit revision that:
 - (A) Corrects typographical errors;
 - (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change;

- (C) Requires more frequent monitoring or reporting by the permittee;
 - (D) Allows for a change in ownership or operational control of a source where the Control Officer determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Control Officer and the permit transfer procedures specified in Section 12.12 are complied with; or
 - (E) Incorporates any other type of change which the Administrator has determined to be similar to those in paragraphs (a)(1)(A) through (a)(1)(D) of Section 12.4.3.4.
- (2) An administrative permit revision may be made by the Control Officer consistent with the following:
- (A) The Control Officer shall take no more than thirty (30) days from receipt of a request for an administrative permit revision to take final action on such request, and may incorporate the revision without providing notice to the public or affected states provided that the revised permit designates any such permit revisions as having been made pursuant to Section 12.4.3.4.
 - (B) The Control Officer shall provide a copy of the revised permit to the Administrator.
 - (C) The source may implement the changes addressed in the request for an administrative revision immediately upon submittal of the request. However, if the Control Officer determines that the change does not qualify as an administrative revision, the source may be subject to enforcement proceedings for violation of any existing permit terms and conditions.
- (3) A significant permit revision to an Authority to Construct Permit is any revision to the permit that is not an administrative permit revision.
- (A) A significant permit revision shall be subject to the same application, determination of completeness, processing procedures, public participation, notification, and timetables as the original Authority to Construct Permit, except that the scope of the procedures shall be limited to the revision and issues relevant to that revision and the proce-

dures specified in paragraphs (c) and (d) of Section 12.5.2.18 do not apply.

- (b) From and after the date of commencing operation, an Authority to Construct Permit shall only be revised pursuant to the procedures for revising a Part 70 Operating Permit in Sections 12.5.2.13 and 12.5.2.14.

12.4.3.5 Administrative Permit Revisions for Title IV Acid Rain Sources

Administrative permit revisions to permit conditions governed by the federal Clean Air Act Title IV Acid Rain Program shall comply with 40 CFR Part 72, as incorporated by reference in Section 21.

History: Adopted May 18, 2010. Amended March 18, 2014.