# CHAPTER 2 GENERAL AND NON-ATTAINMENT AREA PERMITS

**Section**



## 200 GENERAL PERMIT REQUIREMENTS

200.1 A permit from the Mayor shall be obtained before any person shall cause, suffer, or allow the construction of a new stationary source, or the modification of an existing stationary source, or the installation or modification of any air pollution control device on a stationary source.

200.2 An operating permit shall be obtained from the Mayor before any person shall cause, suffer, or allow the operation of the following:

(a) Any major stationary source, for which a construction or modification permit is required under § 200.1; or

(b) Any source for which a construction or modification permit is required under § 200.1, and which construction or modification permit was subject to conditions which affect, or would affect, the operation of the source.

200.3 The Mayor may allow the temporary operation of a source for a period no longer than one (1) month. This period may be extended month to month, to enable the initial evaluation of the operation of a source or device granted a permit under § 200.1, or to enable the continued operation of a source for which an application for an operating permit under § 200.2 has been filed, but due to delays attributable to the Mayor the permit has not been issued. Any temporary operation of a source shall be in accordance with the requirements of this chapter.

200.4 Construction and operating permits, shall be valid for the period specified in the permit, but not to exceed three (3) years.

200.5 Each owner or operator of a stationary source or device for which a permit is required shall timely file with the Mayor the appropriate application.

200.6 Applications for permits shall be filed with the Mayor on the form or forms that the Mayor shall prescribe, and shall be accompanied by the data, information, and analyses necessary or desirable to enable the Mayor to determine whether the

requested permit should be issued or denied.

200.7 The Mayor may require, at any time, the submission of the data, information, and analyses that the Mayor may deem necessary or desirable, to allow the Mayor to determine whether a requested permit should be issued or denied, or an outstanding permit should be modified or revoked.

200.8 Applications for construction and operating permits may incorporate by reference data, information, and analyses otherwise available or provided to the Mayor, provided that the reference is clear and specific.

200.9 Each permit application shall be accompanied by a fee to be determined by the Mayor.

200.10 An application for a permit shall be signed in the following manner:

(a) If the applicant is a partnership, a general partner shall sign the application;

(b) If the applicant is a corporation, association, or cooperative, an officer shall sign the application;

(c) If the applicant is a sole proprietorship, the proprietor shall sign the application; and

(d) If the applicant is a government or governmental agency, department, or board, a senior executive of that government, agency, department, or board who has authority to sign shall sign the application.

200.11 No permit shall be required for any fuel burning equipment which has a capacity of five million (5,000,000) or less B.T.U.s per hour of heat input and which uses for fuel only gaseous fuels or distillate oils. This section shall not apply to sources subject to § 204.

200.12 The Mayor shall establish a schedule of fees for construction and operating permits. These fees shall be sufficient to cover the reasonable costs of reviewing and acting upon the application and the reasonable costs of implementing and enforcing the terms and conditions of the permit.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is § 412 of the District of Columbia Self-Government and Governmental Reorganization Act, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.04 (2001); § 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) codified at D.C. Official Code § 8-101.6 (2001); Mayor's Order 93-12 dated February 16, 1993; and Mayor's Order 98-44 dated April 10, 1998.

**SOURCE:** Section 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) published at 32 DCR 565, 592-93 (February 1, 1985); as amended by Final Rulemaking published at 44 DCR 2793, 2794 (May 9, 1997).

## 201 GENERAL REQUIREMENTS FOR PERMIT ISSUANCE

201.1 The Mayor may issue a permit upon finding the following:

(a) That the applicant's proposed equipment, facilities, and procedures are adequate to minimize the danger to public health and welfare;

(b) That the issuance of the permit will not be inimical to the public health and welfare;

(c) That the applicant has satisfied the applicable requirements for the requested permit established pursuant to this subtitle;

(d) That the operation of the source will not prevent or interfere with the attainment and maintenance of any applicable national ambient air quality standard and will not result in the contravention of any provision of the Federal Clean Air Act or the regulations promulgated under the Act;

(e) That the operation of the source will not result in the violation of any provision of this subtitle; and

(f) That in the case of a major stationary source, that the continuous monitoring devices for opacity and for all pollutants for which the source is a major source are in operation, or in the case of a new source, will be in operation as of the time of start of operation of the source; provided, that no emission monitoring equipment for a pollutant shall be required in a case where the emission of that pollutant is not subject to an emission standard under this subtitle, or where continuous monitoring device is not reasonably available.

**SOURCE:** Section 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) published at 32 DCR 565, 593-94 (February 1, 1985).

## 202 MODIFICATION, REVOCATION AND TERMINATION OF PERMITS

202.1 The terms and conditions of each permit shall be subject to amendment, revision, or modification, and a permit may be suspended or revoked by reason of amendments to this subtitle, or by requirements and orders issued by the Mayor.

202.2 Any permit may be revoked, suspended, or modified, in whole or in part, for any false statement in the application; any false statement of fact required under this subtitle; or because of any condition revealed by the application, any statement of fact, or any report, record or inspection, or other means which would do the following:

(a) Warrant the Mayor to refuse to grant a permit on an original application; or

(b) Qualify as a violation of or failure to observe any of the terms and

conditions of the permit, or of this subtitle, or order of the Mayor.

202.3 Except in cases of willfulness or cases in which the public health or welfare requires otherwise, no permit shall be modified, suspended, or revoked unless, prior to the institution of proceedings, facts or conduct which may warrant action shall have been called to the attention of the permittee in writing, and the permittee shall have been given an opportunity to demonstrate or achieve compliance with all lawful requirements.

202.4 The Mayor may terminate a permit upon the written request of the permittee.

202.5 Except as provided in § 302.2, a permit to construct or modify a source shall be valid only if used within one (1) year from the date of issuance.

**SOURCE:** Section 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) published at 32 DCR 565, 594-95 (February 1, 1985).

## 203 STACK HEIGHT AND DISPERSION TECHNIQUES

203.1 The emission limitation for any pollutant required of any source shall not be affected by the following:

(a) Any source's stack height that exceeds GEP stack height, with GEP stack height meaning the greater of the following:

(1) Sixty-five (65) meters (two hundred thirteen feet (213 ft.));

(2) $H_g = H + 1.5L$, with the equation parameters described in the definition of "dispersion technique" in § 199.1 of this subtitle; or

(3) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from the stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features; or

(b) Any other dispersion technique, except as provided in § 203.4.

203.2 For purposes of modeling to establish emission limitations, the lesser of the physical stack height and the following measurements shall be used:

(a) Sixty-five (65) meters (two hundred thirteen feet (213 ft.));

(b) $H_g = H + 1.5L$, with the equation parameters described in the definition of "dispersion technique" in § 199.1 of this subtitle; or

(c) The height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from the stack do not result in

excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

203.3 In determining whether a demonstration is performed satisfactorily, the Mayor shall take into consideration, among other factors, the methods, documents, and practices used in performing the demonstration.

203.4 The provisions of §§ 203.1 and 203.2 shall not apply to stack heights in existence, or dispersion techniques implemented prior to December 31, 1970, except when a source proposes to connect to a stack built prior to December 31, 1970.

203.5 Before the Mayor issues a permit to a source based on a GEP stack height that exceeds the height allowed by §§ 203.1(a)(1) or 203.1(a)(2), the Mayor shall notify the public of the availability of the demonstration study and shall hold a public hearing on the study if a hearing is requested within thirty (30) days of the date on which the Mayor gives notice of the study.

203.6 Section 203 shall not restrict, in any manner, the actual stack height of any source; however, the actual stack height of a source may be regulated under this chapter.

**SOURCE:** Section 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) published at 32 DCR 565, 595-96 (February 1, 1985); as amended by Final Rulemaking published at 36 DCR 2554 (April 14, 1989).

## 204 PERMIT REQUIREMENTS FOR SOURCES AFFECTING NON-ATTAINMENT AREAS

204.1 This section applies to any new or modified major stationary source of any pollutant that significantly affects any non-attainment area for that pollutant whether or not the source is located in an attainment or non-attainment area. For purposes of this section:

(a) Any source of a pollutant located, or to be located, in a non-attainment area for that pollutant shall be deemed to significantly affect that non-attainment area;

(b) The term “non-attainment area” shall have the same meaning ascribed to that term in § 171(2) of the Federal Clean Air Act:

(c) The term “modified” or “modification” shall have the meaning ascribed to that term in § 199 of this subtitle; except that for the purposes of this section, only those changes that increase the emission of any pollutant shall be considered as included within these terms;

(d) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;

(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 (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plants;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than two-hundred and fifty million (250,000,000) B.T.U.s per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil fuel-fired steam electric plants of more than two hundred and fifty million (250,000,000) B.T.U.s per heat input; and

(27) Any other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under §§ 111 and 112 of the Clean Air Act, 42 U.S.C. §§ 7411 and 7412.

204.2 A construction or operating permit shall not be issued to a source to which this section applies unless the conditions specified in §§ 204.3 - 204.11 are satisfied.

204.3 The emissions from the source shall not exceed that limit represented by the "lowest achievable emission rate" which means for any source, that rate of emissions which reflects the more stringent of the following:

(a) The most stringent emission limitation which is contained in the implementation plan of any State for the class or category of source, unless the owner or operator of the proposed source demonstrates that the limitations are not achievable;

(b) The most stringent emission limitation which is achieved in practice by the class or category or source; or

(c) The emissions allowable under 40 CFR Parts 60 and 61.

204.4 The applicant for a permit for the source will cause to have reduced, prior to the operation of the source, sufficient emissions from other existing stationary sources so that the emissions from the new or modified major stationary source in conjunction with the reduction of the emissions (below the level of emissions that would be permitted under this chapter) from the existing stationary sources, will result in decreased emissions of the pollutant in question, and will not adversely affect the air quality in any area not attaining the national ambient air quality standards. The ratio of total reductions of emissions of oxides of nitrogen from other existing sources to total increases of emission of oxides of nitrogen from the new or modified major stationary source shall be at least one and three tenths (1.3) to one (1.0). The ratio of total reductions of emissions of volatile organic compounds from other existing sources to increases of emissions of volatile organic compounds from the new or modified major stationary source shall be at least one and three tenths (1.3) to one (1.0).

204.5 For purpose of § 204.4, credit may be granted for the reduction of emissions from

existing non-major stationary sources only to the extent it has been shown that the reduced emissions have not been transferred, directly or indirectly, to some other source or place.

204.6 In lieu of compliance with § 204.4, the applicant for a permit may demonstrate that the emissions from the source will not be in excess of the levels permitted under §§ 172(c)(4) and 173(a)(1)(B) of the Clean Air Act, 42 U.S.C. §§ 7502(c)(4) and 7503(a)(1)(B).

204.7 All major stationary sources owned or operated in the District by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) are in compliance with, or on binding agreement to comply with, all emission limitations and standards under this subtitle and under the Federal Clean Air Act.

204.8 In the case of a new or modified major stationary source subject to this chapter, the applicant shall demonstrate through an analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed new or modified sources, that the benefits of the proposed new or modified source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

204.9 The issuance of a permit shall meet the requirements set forth in § 173 of the Clean Air Act, 42 U.S.C. § 7503.

204.10 All offsetting emission reductions obtained in compliance with § 204.4 shall be made legally binding and enforceable directly against the offsetting source.

**SOURCE:** Section 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) published at 32 DCR 565, 596 (February 1, 1985); as amended by: § 2 of the Air Pollution Control Act of 1984 National Ambient Air Quality Standards Attainment Amendment Act of 1993, D.C. Law 10-24 (D.C. Act 10-56) published at 40 DCR 5474, 5477 (July 30, 1993); Final Rulemaking published at 44 DCR 2793, 2794 (May 9, 1997); Final Rulemaking published at 44 DCR 2793, 2794-2796 (May 9, 1997); and Final Rulemaking published at 51 DCR 3877 (April 16, 2004).

## 205 NEW SOURCE PERFORMANCE STANDARDS

205.1 A person shall not construct, modify, or operate or cause to be constructed, modified, or operated a New Source Performance Standard (NSPS) source which results or will result in violations of the provisions of 40 CFR Part 60, as in effect on September 30, 1997, with the terms used and defined in those provisions.

**SOURCE:** Section 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) published at 32 DCR 565, 596 (February 1, 1985); as amended by Final Rulemaking published at 45 DCR 7038, 7039 (October 2, 1998).

## 206 NOTICE AND COUNT PRIOR TO PERMIT ISSUANCE

206.1 The Mayor shall cause to be published a notice regarding the application in accordance with 40 CFR Part 51.161 and D.C. Official Code § 2-505 (2001), by prominent advertisement and with circulation in the District of Columbia and any other area impacted pursuant to the air quality impact analysis.

206.2 The notice shall provide information regarding the availability of the application for public inspection and copying, along with the availability of the ambient air quality impact analysis and proposed approval or disapproval prepared by the Mayor.

206.3 A copy of the notice shall be sent to the U.S. Environmental Protection Agency, through its Region III, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located.

206.4 The applicant shall pay a reasonable fee to cover all costs incurred in providing notice.

206.5 The notice shall provide the opportunity for written comments from the public within thirty (30) days.

**SOURCE:** Final Rulemaking published at 44 DCR 2793, 2797 (May 9, 1997).

## 207 PERMIT REQUIREMENTS FOR INDIRECT SOURCES

207.1 On or after the effective date of this section, no person shall cause, suffer or allow the construction or modification of any indirect source without first obtaining a permit for the construction or modification from the Mayor; except that no permit shall be required for the construction or modification of:

(a) Residential premises, apartment houses, or housing subdivisions or other housing complexes designed to house less than fifty (50) families;

(b) Shopping and/or office and/or commercial facilities having less than fifty thousand (50,000) square feet of gross floor space;

(c) Entertainment and/or recreational facilities, including theaters, auditoriums, sports stadiums, bowling alleys, having a capacity to accommodate no more than four hundred (400) persons at any time;

(d) Parking facilities having a capacity of less than fifty (50) vehicles; and

(e) Other sources and classes of sources determined by the Mayor to have insignificant impact on air quality.

207.2 On or after the effective date of this section, no person shall cause, suffer or allow the operation of any indirect source, the construction or modification of which required a permit under the provisions of § 207.1, without first obtaining a permit from the Mayor.

207.3 Applications for permits shall be timely filed with the Mayor and shall:

(a) Identify the size, nature and location of the source;

(b) Contain the following data, along with the basis for the data, that may apply to the proposed facility, projected for the following ten (10) years at yearly intervals, or at other meaningful intervals and reflecting normal conditions and expected worse conditions (e.g. traffic jam, poor diffusion conditions in the atmosphere):

(1) Number of persons and number of automobiles expected to enter and leave the facility per hour, classified by type of person (e.g. employee, tenant, customer, visitor or guest);

(2) Percentage and number of person-trips expected to be made, classified by mode of travel (e.g., auto, taxi, bus, train, bicycle, walking) and by hour of day, type of person and any other appropriate and meaningful criteria;

(3) Expected periods of operation of the facility, classified by the different purposes that facility is to serve;

(4) Expected average speed of the automobiles in the facility, classified by hour of day;

(5) The different highways, roads, streets, roadways and similar travel corridors expected to serve the vehicles that use the facility and the number of vehicles expected to use these travel corridors, classified by hour of day;

(6) The amounts of carbon monoxide expected to be emitted, per hour, from the travel corridors described in paragraph 5; and

(7) The expected carbon monoxide air quality at all critical receptor points in and around the facility and around the travel corridors described in paragraph 5 above;

(c) Contain detailed information on and discussion of the measures taken to minimize the vehicle-miles-of-travel (VMT) the facility induces including the following:

(1) The need for the facility;

(2) Alternate locations and designs of the facility;

(3) Inducements to use public transit and disincentives to use a private

automobile (inducements and disincentives include high parking charges, purchase of regular and special services from transit agencies, climate controlled access to transit facilities, provision of attractive bus shelters and provision of free transit tokens to employees, customers and other persons);

(4) Restrictive covenants in leases concerning auto ownership of residents;

(d) Contain other information the Mayor requests that is necessary to perform a thorough evaluation of the air pollution aspects of the source;

(e) Show that the facility will not prevent or adversely affect the attainment or maintenance of any local or national ambient air quality standard;

(f) Show that the adequate provisions will be made to monitor and record the performance and operating characteristics of the facility;

(g) Show that the facility will comply with all applicable requirements of this Title and of the District of Columbia Environmental Policy Act of 1989, effective October 18, 1989 (D.C. Law 8-36; D.C. Official Code § 8-109.1 (2001) et seq.);

(h) Demonstrate why more restrictive measures to minimize the VMT cannot be implemented;

(i) Contain the signature of the applicant or that of a person duly authorized to act for and on behalf of the applicant; and

(j) Be accompanied by a processing fee to be determined by the Mayor.

207.4 Information already in the possession of the Mayor may be incorporated into the application by reference, provided the reference is clear and specific. Incorporation by reference, however, shall not relieve the applicant of the responsibility to submit the information when the mayor requests it.

**SOURCE:** Final Rulemaking published at 47 DCR 8638, 8640-8643 (October 27, 2000); as amended by 47 DCR 9686, 9688-91 (December 8, 2000).

## 299 DEFINITIONS AND ABBREVIATIONS

299.1 The meanings ascribed to the definitions and abbreviations appearing in §§ 199.1 and 199.2 respectively of Chapter 1 shall apply to the terms and abbreviations in this chapter.

**SOURCE:** Section 3 of the District of Columbia Air Pollution Control Act of 1984, D.C. Law 5-165 (D.C. Act 5-230) published at 32 DCR 562, 598 (February 1, 1985).