Chapter 4
Air Permits

4-1 Introduction

The purpose of this chapter is to provide the reader with a basic understanding on how the air pollution control ("air") permit process works. It is intended to provide to a plant manager/operator with a general understanding of the air permitting requirements in Ohio and tips on how to ensure that a company complies with its air permitting obligations. Further, this chapter is available in an electronic format. If the reader has access to the Internet, he/she will enjoy quick access to many detailed references that allows the reader to enhance their understanding of the air permitting requirements.

4-2 Glossary of Terms

Note: The location of the actual Ohio EPA definitions follow in bracket parentheses, where the definition is found in the Ohio rules. The following definitions may not necessarily contain the full or complete language, as is documented in the OAC (Ohio Administrative Code) rules found in 3745-31-01.

Air contaminant source: each separate operation or activity that results or may result in the emission of any air contaminant. Examples include a crusher, an aggregate processing facility, and a roadway. [OAC 3745-31-01(I)] and [OAC 3745-35-01(B)(4)]

Air contaminant: as defined under OAC 3745-31, particulate matter, dust, fumes, gas, mist, smoke, vapor, odorous substances, or any combination thereof." Used interchangeably in this Manual with "air pollutant". [OAC 3745-31-01(H)]

Air pollution control systems: an engineered device that minimizes or eliminates the release of air pollutants generated by a source to the atmosphere.

Affected facilities: (NSPS term) any aggregate processing equipment subject to the NSPS standard.

Best Available Technology (BAT): any combination of work practices, raw material specifications, throughput limitations, source design characteristics, an evaluation of the annualized cost per ton of air pollutant removed, and air pollution control devices that have been previously demonstrated to the director of environmental protection to operate satisfactorily in this state or other states with similar air quality on substantially similar air pollution sources. [OAC 3745-31-01(T)]

Building: any frame structure with a roof where the roof must be constructed solely as a weather barrier. A building does not necessarily have to have walls or a foundation to meet the NSPS definition. [40 CFR 60.671]

Construction: in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipe work, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, that mark the initiation of the change. Also, any physical change or change in the method of operation that would result in a change in actual emissions, including fabrication, erection, installation, demolition or modification of an emissions unit. [OAC 3745-31-01(DD)]

Director: Director of the OEPA [OAC 3745-77-01(L)]

Fugitive Emission: particulate matter that is not collected by a capture system like duct work, and is released into the atmosphere at the point of generation. [OAC 3745-31-01(RR)] and [OAC 3745-77-01(S)]

Hazardous air pollutant: any air pollutant listed in or pursuant to section 112(b) of the Clean Air Act. [OAC 3745-31-01(VV)] and [OAC 3745-77-01(V)]

Installation: the beginning of actual construction, erection, location or affixation of any air contaminant source.

Model General Permit (MGP): an air pollution permit for aggregate processing plants and related sources with standardized terms and conditions available for application by an owner or operator. The MGP becomes the General Permit (GP) for the emissions unit when it is issued by the OEPA. Because it contains standardized language, it can be issued faster than an individual permit. [OAC 3745-31-01(OOO)] and [OAC 3745-35-01(B)(9)]

Modify or Modification: (in regards to permits) has a lengthy definition, but essentially refers to any physical change in, or change in the method of operation of any air contaminant source that results in an increase in the allowable emissions or results in an increase in emissions of greater than the de minimis levels in rule 3745-15-05 of the Administrative Code of any type of air contaminant not previously emitted. [OAC 3745-31-01(PPP)]

New source: any air contaminant source and/or disposal system for which an owner or operator undertakes a continuing program of installation or modification or enters into a binding contractual obligation to undertake and complete, within a reasonable time, a continuing program of installation or modification, after January 1, 1974, and that at the time of installation or modification, would have otherwise been subject to the provisions of this chapter. The replacement of an entire air contaminant source is considered a new source. [OAC 3745-31-01(TTT)]

New Source Performance Standards (NSPS): A Federal standard that requires performance testing for new equipment that has the capacity to generate air pollution.

OEPA Representative: representative of the OEPA, Division of Air Pollution Control or local air agency, who is responsible for working with the individuals within the regulated community towards development and issuance of a permit.

Permit: An agency issued document that allows a business to operate sources of air pollutants within limits designed to protect the environment and human health.

Permit to Install ("PTI") – Any new or modified air contaminant source as defined in OAC rule 3745-31-01 must apply for and obtain a PTI prior to source being constructed or modified. The requirements for PTI's can be found in OAC Chapter 3745-31 at the following website: http://www.epa.state.oh.us/dapc/regs/3745-31/3745_31.html.

Reconstruction of an Existing Facility: "the replacement of components to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost to construct a comparable new facility, and it is technologically and economically feasible to meet the applicable standards." (Regulatory and Inspection Manual for Nonmetallic Mineral Processing Plants [revised]; EPA 305-B-97-008, page 75)

Saturated: 1. (for NSPS) equipment that carries aggregate from a wet mining operation, up to but not including the first crusher or grinding mill; equipment that carries aggregate from a wet screen (ie: wash screen), up to but not including the first crusher or grinding mill. 2. (for general purposes) 2. soaked through with moisture; wet.

Terms and Conditions: specific requirements contained in an air pollution permit pertaining to operation of equipment and air pollution limitations.

Wet Mining Operations: NSPS term; a mining or dredging operation designed and operated to extract any nonmetallic mineral regulated under this subpart from deposits existing at or below the water table, where the nonmetallic mineral is saturated with water. (same as found in 40 CFR 60.671)

Wet Screening Operations: NSPS term; a screening operation at a nonmetallic mineral processing plant which removes unwanted material or which separates marketable fines from the product by a washing process which is designed and operated at all times such that the product is saturated with water. (same as found in 40 CFR 60.671)

* The paragraph lettering (location in rule) will change as OAC 3745-31-01 is modified, and more definitions are added, alphabetically, to this Section of the Ohio Permit to Install rules.

4-3 Executive Summary

Chapter 4 "OAIMA Air Permit Compliance Manual" is designed to provide the aggregate plant operators with a good overview of the various air pollution control activities that will likely assist them to make good decisions to meet the regulatory requirements in Ohio that ensures healthy air quality. The following summarizes the major points provided in each section of the chapter:

- **Qualifications:** This section provides the aggregate plant operator the types of operations that will likely require air pollution control permits.

- **Permit Forms**: This section describes the various air pollution control permit application forms that may be required to complete in order to file a complete and acceptable application.

- **Regulatory Requirements:** This section describes the various types of air permits that may be issued, including permits to install, permits to operate; and Title V operating permits. These permits may contain federal regulations such as the New Source Performance Standards (NSPS), Prevention of Significant Deterioration (PSD), and/or Nonattainment rules. They will need Major New Source Review if they are regulated under the PSD or nonattainment rules. A detailed discussion of the requirements of the application process is provided. This includes helpful instruction on completing the required application forms and the most frequently used Emissions Activity Category Form – Aggregate Processing Plants.

- **Permit Compliance:** This section is helpful to the plant operators once they have received one or more air pollution control permits. It provides the reader with an overview of the various components of an air permit. It then provides detailed information on the "*de minimis*" exemption that is available for emissions units

that emit very small quantities of emissions. This section also provides a number of tips that should be helpful to the operator to comply with the obligations of their air permits.

- **Inspection Protocol:** This section describes what to expect during an Ohio EPA facility inspection. There is a discussion on the current inspection policies and practices that Ohio EPA follows. Suggestions are also provided to ensure that the inspection goes smoothly and that the company obtains full disclosure of the inspection results.

- **Enforcement of the air permits:** An overview of the current Ohio EPA enforcement program is provided. Information is provided to the operator that should be very helpful if one or more violations are alleged by Ohio EPA. It provides a complete summary of all the enforcement steps normally taken and suggestions on avoiding any significant enforcement and monetary penalties.

4-4 Qualification

Air Permitting

- Aggregate Processing Plants generally must obtain air pollution **permit**s for the following **source**s of dust: processing plants**,** conveyors, crushers, screening operations, roadways and parking areas, stockpiles, and mineral extraction;

- Other sources of **air contaminants** at a plant may also require a permit;

- A Permit To Install (PTI) is necessary for all sources installed after January 1, 1974 (must obtain permit prior to construction of source);

- A Permit to Operate (PTO) is necessary for sources installed at any time (even prior to January 1, 1974). Application for the PTO must be submitted within 90 days of commencing operation (OAC 3745-35-02(B)(5)).

- **Air pollution control systems** are required on any source that generates too much dust;

- Making operational or physical changes at a plant (adding equipment, increasing throughput, etc.) may trigger the PTI process again;

- Portable aggregate processing equipment must be permitted in Ohio. If the equipment will be moved to other locations, request the unit to be permitted as a portable source; see relocation of a permitted portable source in OAC 3745-31-03(A)(1)(p).

New Source Performance Standards (NSPS)

- Most of the equipment commonly associated with an aggregate processing plant is subject to NSPS (40 CFR Part 60 Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants) IF the owner or operator has commenced construction, reconstruction or modification of the unit after August 31, 1983;

- NSPS requires control of dust to certain limits, written notifications of specified activities, testing of equipment and record keeping;

- NSPS may be triggered again when additional equipment is added to a plant, when existing equipment is replaced by other equipment, and when production rates increase.

4-5 Permit Forms

Permit to Install

The application will consist of the PTI form and the appropriate Emissions Activity Category Forms. The currently available forms (for individual permits) are listed below:

- Ohio Environmental Protection Agency Application for Permit To Install (EPA Form 3150)
- Emissions Activity Category Form - Aggregate Processing Plants: Fugitive Dust Emissions (EPA Form 3133),
- Emissions Activity Category Form - Material Handling: Fugitive Dust Emissions (EPA Form 3113),
- Emissions Activity Category Form - Roadways and Parking Areas: Fugitive Dust Emissions (EPA Form 3111),
- Emissions Activity Category Form - Mineral Extraction: Fugitive Dust Emissions (EPA Form 3114) , and

- Emissions Activity Category Form - Stockpiles: Fugitive Dust Emissions (EPA Form 3112)

The currently available forms and instructions may be found on OEPA's website (go to http://www.epa.state.oh.us/dapc/permits/permits.html, then double click on either ".ZIP, WordPerfect 6/8" or "ZIP, Microsoft Word" in the second sentence of the first paragraph). It is important to note that the forms must be filled in completely. If you are not able to complete the forms fully, it is quite likely that your application will be returned as incomplete. If you are unsure of where to find information or how to fill out the forms, call your OEPA representative to discuss the situation - early in the process.

Permit to Operate

OAC 3745-35 requires that a PTO be obtained for any air contaminant source operating in the State of Ohio. New sources covered under current PTIs will not be required to submit duplicate Emissions Activity Category (EAC) forms; however, previously unpermitted sources constructed prior to January 1, 1974 will be required to provide complete EAC forms along with the PTO application. As with the PTI forms, the currently available PTO forms and instructions may be found on OEPA's website (go to http://www.epa.state.oh.us/dapc/permits/permits.html, then double click on "Permit to Operate (PTO) (zipped, WordPerfect 9)" in the second sentence of the first paragraph).

The currently available forms are listed below:

- Ohio Environmental Protection Agency Application for Permit To Operate (EPA Form 3161)
- Emissions Activity Category Form - Aggregate Processing Plants: Fugitive Dust Emissions (EPA Form 3133),
- Emissions Activity Category Form - Material Handling: Fugitive Dust Emissions (EPA Form 3113),
- Emissions Activity Category Form - Roadways and Parking Areas: Fugitive Dust Emissions (EPA Form 3111),
- Emissions Activity Category Form - Mineral Extraction: Fugitive Dust Emissions (EPA Form 3114), and
- Emissions Activity Category Form - Stockpiles: Fugitive Dust Emissions (EPA Form 3112)

Model General Permits to Install (MGPTI) and Model General Permits to Operate (MGPTO)

Currently, MGPTIs and MGPTOs are available for paved roadways & parking areas, unpaved roadways & parking areas, and storage piles. These can be found on OEPA's General Permit website
(go to http://www.epa.state.oh.us/dapc/genpermit/genpermits.html). It is anticipated that a MGPs will be available for aggregate processing emissions units in the near future. The same applications will be use when applying for an MGP; however, the MGP application instructions allow for only selected portions of the application and EAC forms to be completed. You will also be required to complete and sign a qualifying criteria document and submit this as part of your application. This will identify to the Ohio EPA what specific MGP(s) you are applying for.

Note: If you have concerns or questions about signing the document, consult with Legal counsel before signing the document.

4-6 Regulatory Requirements

Background Information

The information in this Chapter is designed to help owners and operators of aggregate operations comply with rules and regulations associated with air pollution. The Clean Air Act (CAA) and its amendments were designed to "protect and enhance the nation's air resources so as to promote the public health and welfare and the productive capacity of the population." As allowed by the CAA, the U.S. EPA has delegated much regulatory authority of air pollution issues in Ohio to the State of Ohio. The agency that

is responsible for implementing the program is known as the Ohio Environmental Protection Agency, (OEPA) and their responsibility is detailed in Ohio's State Implementation Plan (SIP). Ohio is authorized to administer an air pollution permit system and New Source Performance Standards (NSPS); each will be discussed individually below.

Air Permitting

In Ohio, the OEPA requires all facilities with sources of air pollutants to participate in an air pollution permit system. For the aggregate industry, the most prevalent air pollutant is **particulate matter**, emitted mostly as **fugitive** dust. Fugitive dust sources include plant roadways and parking areas, aggregate storage piles, aggregate processing or handling equipment, and mineral extraction. Other air contaminant sources often found at aggregate plants include storage tanks, parts cleaning stations, used oil burners, and internal combustion engines. There are several exemptions that may apply to smaller emissions units, in OAC 3745-31-03 (Permit to Install Exemptions), if all of the qualifying requirements are met per the applicable rule(s). Some of the pollutants associated with these other sources include nitrogen oxide compounds, sulfur oxide compounds, volatile organic compounds, and other hazardous air pollutants.

Ohio's permitting system currently is divided into two separate permits: the Permit To Install (PTI) and the Permit To Operate (PTO). The requirements for these permits may be found in **Ohio Administrative Code (OAC)**, Chapters 3745-31 and 3745-35, respectively. Approximately 95-percent of all aggregate processing facilities in Ohio are subject to the PTI and/or PTO rules for their emissions of particulate matter (dust). The remaining five-percent of facilities are either so small that they are exempt from the permitting rules (OAC 3745-31-03) or they are so large that they are bumped into Title V of the Clean Air Act. These large facilities are defined as **major source**s of air pollutants and they are characterized by having the potential to emit over 100 tons per year of particulate matter (and/or triggers for hazardous air pollutants). At this time, OAIMA believes that there may be only three to seven Title V facilities in Ohio. Due to this fact, Title V permitting rules will not be discussed in this chapter; PTI and PTO issues will be the main focus.

The possibility of an enforcement action for operating without appropriate permits is far greater for facilities discovered by the Ohio EPA through direct observation or citizen complaints than for an operator who voluntarily seeks compliance with applicable rules and regulations. In recent months, citizen complaints have been the single most prevalent source of investigation/enforcement action by the agency.

Furthermore, no source may emit too much dust. Aggregate processing equipment, roadways, etc. are expected to utilize some controls to minimize dust. Sources installed prior to January 1, 1974 will receive PTOs that will require them to continue to use and maintain any emission control practices currently in use. However, if those sources are determined to be a **public nuisance** under OAC 3745-15-07, the agency may require the owner/operator to install **reasonably available control measures** (RACM).

New sources installed after January 1, 1974 will receive PTIs and PTOs that will require that the source employ best available technology (BAT) (except when the only requirement to obtain a PTI is due to a modification as described in (J) (1)(b) of rule 3745-31-01 of the Ohio Administrative Code).

Permit-by Rule Exemptions

There are permit-by-rule exemptions available in OAC 3745-31-03(A)(4)(d)*, if the facility employs the appropriate controls, meets the required opacity limits, and collects and maintains the records required to demonstrate compliance with the exemption. The permit exemption applies to the following sources if compliance can be demonstrated with the control, opacity restrictions, and records that follow:

Fixed sand and gravel plants and crushed stone plants with capacities, as defined in 40 CFR 60.671, of 23 megagrams per hour (25 tons per hour) or less; and

Portable stone and gravel plants and crushed stone plants with capacities, as defined in 40 CFR 60.671, of 136 megagrams per hour (150 tons per hour) or less; and

Common clay plants and pumice plants with capacities, as defined in 40 CFR 60.671, of 9 megagrams per hour (10 tons per hour) or less; and

Fixed and portable soil screening plants with capacities, as defined in 40 CFR 60.671 of 136 megagrams per hour (150 tons per hour) or less; AND

That either employ a baghouse, wet scrubber, water sprays or combination thereof that is designed and operated to emit no more than 10 percent opacity from stack or fugitive emission points, or employs and enclosed design that is designed and operated to emit no more than 15 percent opacity from stack or fugitive emission points, and that maintain the following daily records:

1. material throughput in tons per day; and
2. pressure drop readings across the control device as applicable; and
3. meter readings of quantities of water used for wet scrubbing and spray applications as applicable; and
4. operating hours of the crushing and grinding equipment.

* The paragraph lettering (location in rule) may change as OAC 3745-31-03 is modified, and more exempted sources are added to this Section

Permit to Install

OAC 3745-31-02 states that no person shall cause, permit, or allow the **installation** of a new source of air pollutants, or cause, permit or allow the **modification** of an air contaminant source without first obtaining a permit to install from the director of the Ohio EPA. This means that you should consider submitting an application for a PTI each time you:

- Plan to purchase and install a new aggregate processing plant;
- Plan to purchase and install a new portable aggregate processing plant;
- Plan to purchase other, new equipment that has the potential to emit dust or other air contaminants;
- Plan to open a Greenfield site for the mining, processing, and sale of aggregate products;
- Install even a single brand new piece of aggregate processing equipment in your plant;
- Replace an existing piece of aggregate processing equipment;
- Bring in a piece of equipment from another site to supplement your processing plant;
- Transfer in a portable aggregate processing plant from a different location [if the emissions units, comprising the plant, have not been permitted specifically as "portable sources", as allowed per *OAC 3745-31-03(A)(1)(p)];]
- Increase the raw feed rate of the primary circuit;
- Significantly increase the production rate of any piece of equipment in the aggregate processing plant (no longer meets permit limits);
- Change the use of a piece of aggregate processing equipment from **saturated** to dry;
- Add new roadways to your site, or lengthen the existing roadways on site;
- Significantly alter traffic patterns on-site such that vehicles must travel longer distances than before;
- Plan to stockpile more aggregate than you had previously stockpiled;
- Increase the number of stockpiles on site;
- Strip more ground on an annual basis than you did before; and/or
- Mine more material on an annual basis than you did before.

* The paragraph lettering (location in rule) may change as OAC 3745-31-03 is modified, and more exempted sources are added to this Section

Keep in mind that this list is not exhaustive; there are other activities that could trigger the PTI process. In all cases, the PTI process should begin by contacting your appropriate **OEPA representative** and discussing the proposed plan. Explain what type of source is being installed, discuss what are the appropriate control measures required, what permit application forms need to be filed, and what fees will be assessed for the project.

At this time, OEPA issues individual air permits. This means that the air permit is constructed specifically in response to the information included in the application submitted by the owner/operator. Therefore, individual permits may vary from site to site and/or from region to region. In an effort to standardize the language found in a vast majority of aggregate processing plant permits, OAIMA and OEPA have been working together to develop a **Model General Permit**. As mentioned previously, it is believed that a **Model General Permit** will be available for aggregate processing emissions units in the near future.

The application will consist of the PTI form and the appropriate Emissions Activity Category Forms. See Section 4-5 "Permit Forms" for detailed information on what forms need to be completed and where to obtain a copy of these forms.

Timing in preparation and submission of the application is critical. Since Ohio Law requires that a PTI be issued prior to beginning construction of the source, planning ahead is critical. Ohio Law allows the OEPA to take up to six months to respond to permit applications; however, a complete application for a non-major source may take much less. Some larger, more complex, and/or negotiated permits do take significantly longer to be finalized. If the agency returns an application because it is incomplete, the clock stops until the required information is furnished. There is a mechanism in place that will allow the OEPA to consider the expedition of a permit, but no one should absolutely count on this during the permitting process. One of the main goals of using the **Model General Permit** process will be the streamlining of issuance of permits.

Once an application has been submitted to the agency and has been deemed complete, the local or district OEPA office will review the application to determine if the new **installation** or modification will comply with all applicable air pollution regulations and develop any necessary **terms and conditions**. The application, rough permit language and recommendations from the local or district OEPA office will then be sent to the OEPA Central Office for approval. If approved after technical review, the Central Office will then issue a Final or Draft PTI.

Issuance of a Final PTI means that the agency-preferred language is included in the legally-binding permit, usually without review by the applicant. Until the **Model General Permit** is available, it is recommended that if the sources for which permits are being sought are of a different type than permitted before, or if you are working with a local or district OEPA office for the first time, that you request to see the permit language prior to the local or district OEPA office sending the package to Central Office for review. This allows you the opportunity to review that language for accuracy and practicality.

Certain types of permits are issued draft prior to the permit being issued final; these would include PSD, nonattainment, and synthetic minor permits, and any controversial permit. This means that the applicant receives a copy of the draft language and the public is notified of the presence of a draft permit via notices placed in local newspapers that describe the proposed installation. The public has 30-days to submit comments on the

installation and/or the language in the permit. If no comments are received, the PTI is issued in final form. If the OEPA receives many comments, the agency may hold public hearings and possibly modify or deny the PTI.

Once all the language issues are resolved, the PTI is issued in Final form to the applicant. Upon receipt of the permit, the company is allowed to begin **construction** of the source. The PTI also contains language that allows the source to operate for a period of one year while the owner/operator verifies that the source can be operated in accordance with the information contained within the application, as well as, within the ensuing permit terms and conditions. The PTI shall be terminated within eighteen months following the date of issuance, if the owner or operator has not undertaken a continuing program of installation or modification. PTIs can be renewed once, if a timely extension is requested.
A PTI fee accompanies the permit. The fee schedule may be found at the following web address: www.epa.state.oh.us/pic/fees. It is important to note that if the source was constructed prior to issuance of the PTI, the agency may double the fee and also reserves the right to enforce the installation without benefit of a PTI, in accordance with OAC 3745-31-02.

One Installation Certificate for each permitted source is also enclosed with the permit. This written certification states that the source has been constructed in accordance with the PTI application and the terms and conditions of the PTI. These certificates must be completed and submitted to the agency upon completion of construction and prior to start-up of the source.

Once the source is installed and is in compliance with the applicable OEPA rules and regulations set forth in the PTI, the company will need to file an application for a Permit To Operate (PTO). The PTO application must be submitted within 90 days of commencing operation of the unit.

Permit to Operate

OAC 3745-35 requires that a PTO be obtained for any air contaminant source operating in the State of Ohio. New sources covered under current PTIs will not be required to submit duplicate Emissions Activity Category (EAC) forms; however, previously unpermitted sources constructed prior to January 1, 1974 will be required to provide complete EAC forms along with the PTO application. As with the PTI forms, the PTO forms and instructions may be found on OEPA's website [go to http://www.epa.state.oh.us/dapc/permits/permits.html, then double click on "Permit to Operate (PTO) (zipped, WordPerfect 9)" in the second sentence of the first paragraph]. The currently available forms are discussed in Section 4-5 "Permit Forms."

At this time, there is no fee that accompanies the application for or receipt of a PTO. However, annual air emissions fees are assessed to the holders of a PTO or registered emissions unit.

The remainder of the PTO permitting process is the same as with the PTI. Draft PTOs are seldom issued, since public notice is usually provided in a draft PTI, and the agency's goal is to use the same or similar terms and conditions in the PTO, as were issued within the PTI. PTOs are issued following the verification that the source is operating within the terms and conditions stated in the PTI. PTOs are renewable permits. While the renewal period currently is five years, the agency is considering extending the lifetime of PTOs to 10 years; and is also considering combining the PTI and operating permit programs, to issue combined "PTIO" permits in the future. Ohio EPA plans to have this major change in issuing permits accomplished sometime in 2007.

Appeal Process

All PTIs and PTOs should be read carefully, immediately upon receipt. While it is desirable to iron out problems associated with the terms and conditions in any permit prior to that permit being issued, sometimes permits are issued with terms and conditions that cannot be complied with reasonably. Once discovered, these issues should be discussed with the OEPA representative as quickly as possible. Some types of issues can be addressed outside of the formal appeal process; others may not. In those extreme cases, it may be necessary to file an appeal with the Ohio Environmental Review Appeals Commission pursuant to ORC 3745.04. While not required, it is advisable to seek legal guidance for these proceedings.

The appeal must be in writing and set forth the action complained of and the ground upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within 30 days after notice of the **Director**'s action, which is the issuance date of the permit in question. The appeal should be sent to the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215
A copy of the appeal must be served upon the Director within three days of filing with the Environmental Review Appeals Commission.

While most permit matters will be resolved through the Environmental Review Appeals Commission procedure, the Environmental Review Appeals Commission's decision is appealable to the 10th District Court of Appeals in Franklin County. This appeal must be made in a timely manner and legal counsel experienced in environmental matters is advisable.

NSPS

Background Information

40 CFR Part 60 Subpart OOO is the New Source Performance Standard applicable to nonmetallic mineral processing plants. "The NSPS for nonmetallic mineral processing plants provides:

- Rules for applicability of the standards and designation of **affected facilities**,
- Standards for particulate matter emitted from affected facilities,
- Monitoring, reporting and record keeping requirements, and
- Testing methods and procedures for determining compliance with the emissions standards (reference "Regulatory and Inspection Manual for Nonmetallic Mineral Processing Plants [revised]", EPA 305-B-97-008, page 1).

The aggregates and industrial minerals industry is subject to Subpart OOO because the following products are **defined** to be nonmetallic minerals in 40 CFR 60.671:

> Crushed or broken stone, including: limestone, dolomite, granite, trap rock, sandstone, quartz, quartzite, marl, marble, slate, shale, oil shale, and shell;
> Sand and gravel;
> Clay, including: Kaolin, Fireclay, Bentonite, Fuller's earth, Ball clay and common clay;
> Rock salt;
> Gypsum;
> Sodium compounds, including: sodium carbonate, sodium chloride, and sodium sulfate;
> Pumice;
> Gilsonite;
> Talc and pyrophyllite;
> Boron, including: Borax, kernite, and colemanite;
> Barite;
> Fluorospar;
> Feldspar;
> Diatomite;
> Perlite;
> Vermiculite;
> Mica;
> Kyanite, including: Andalusite, Sillimanite, Topaz, and Dumortierite

The intent behind the NSPS is to ensure that new sources (ie: equipment) of air contaminants (i.e: particulate matter) are adequately controlled so that the emissions are within limits that protect human health and the environment. The NSPS applies to only certain individual pieces of operating equipment within the processing plant that **commenced construction, reconstruction, or modification** after August 31, 1983. The regulation applies only to affected facilities, which are identified as each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. It does not include emissions from roadways or mining stockpiles; and exemptions in the rule include:

- all facilities located in underground mines;
- stand-alone screening operations at plants without crushers or grinding mills, fixed sand and gravel plants and crushed stone plants with capacities of 25 tons per hour or less;
- portable sand and gravel plants and crushed stone plants with capacities of 150 tons per hour or less;
- common clay plants and pumice plants with capacities of 10 tons per hour or less; and
- truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher

In addition, only affected facilities that were installed, **modified** or **reconstructed** after August 31, 1983 are subject to the rule. The date of manufacture of an affected facility has no bearing on NSPS. For example, a crusher installed in 1959 that has never been modified or reconstructed is not subject to NSPS, however, **this** crusher would require a PTO and would be subject to that permit's terms and conditions.

Standards for Particulate Matter

The NSPS standard includes standards for stack emissions, as well as fugitive emissions for particulate matter and opacity. Stacks are tested by conducting a "stack test" for emissions of particulate matter (grams/dry standard cubic meters) or for opacity by "visible emissions" testing; each will be discussed in more detail in the section of this Chapter entitled "Monitoring Methods". Fugitive dust sources are tested for opacity by "visible emissions" testing.
The particulate matter standards are as follows:

- Stack emissions of particulate matter from any transfer point on belt conveyors or from any other affected facility shall not exceed 0.05 grams/dscm (0.022 grains/dscf) and shall not exceed 7% opacity, unless the stack emissions are discharged from an affected facility using a wet scrubbing control device.

  Stack emissions from any baghouse that controls emissions from an individual, enclosed storage bin shall not exceed 7% opacity; multiple storage bins with

combined stack emissions shall not exceed 0.05 grams/dscm (0.022 grains/dscf) nor 7% opacity.

Fugitive emissions from any transfer point on belt conveyors or from any other affected facility shall not exceed 10% opacity, except as stated otherwise in the rule.

Fugitive emissions from any crusher where a capture system is not used shall not exceed 15% opacity.

There shall be no visible emissions from any building enclosing any transfer point on a conveyor, belt, or any other affected facility, except from a vent, which shall meet the stack emission limits above.

There shall be no visible emissions from wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to the next crusher, grinding mill or storage bin.

There shall be no visible emissions from screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, where these operations process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

- EPA Method 22 is performed outside the building to demonstrate compliance with no visible emissions.

  EPA Method 9 is performed to demonstrate compliance with the 10% or 15%, as listed above.

Our thanks to the U.S. EPA, Environmental Quality Management, Inc. and NSSGA for allowing the use of their Regulatory and Inspection Manual for Nonmetallic Mineral Processing Plants [revised], EPA 305-B-97-008 in preparation of the NSPS part of this Chapter.

Monitoring Methods

The NSPS standard is fairly complex. This section of this Chapter will summarize the most prevalent monitoring method requirements. Please be aware that not all requirements are addressed here. 40 CFR 60, Subpart OOO and Revisions are included in Appendix C of this Chapter; 40 CFR 60, Subpart A (General Provisions) is included in an abbreviated form in Appendix D of this Chapter.

Emissions Source EPA Method; results Complexity of Test

- Exhaust stack on air pollution control device: Method 5 or 17;
- Determines particulate matter concentration
- Requires specialized equipment

- Transfer points associated with screening operations, bucket elevators, belt conveyors, bagging operations and storage bins: Method 9;
- Determines opacity, visual test; requires no specialized equipment
- Tester must certify in Method twice annually

Crushers and grinding mills: Method 9;
- determines opacity, visual test;
- Determines opacity, visual test; requires no specialized equipment
- Tester must certify in Method twice annually

- Any affected facility enclosed in a building: Method 22 or 9;
- Determines opacity, visual test; requires no specialized equipment
- Method 22 requires no training,
  Method 9, tester must certify in Method twice annually

Reporting and Record keeping Requirements

Reporting consists of the submission of specific information that has been compiled as a result of record keeping to the agency. The following table summarizes the most common reporting requirements:

- Notification of date the construction was commenced (within 30-days of/after commencement of construction)
    - Date
    - Site address
    - State-issued Premise Number
    - Description of all affected facilities
- Notification of initial start up date (within 15 days of/after initial start up Date)
    - Site address
    - State-issued Premise Number
    - Description of each affected facility
    - Equipment manufacture of each affected facility
    - Serial number of each affected facility
- Notification of intent to perform required monitoring/performance testing (at least 30-days prior to the test date)
    - Equipment description
    - Maximum production rate
    - Date of proposed test
    - Contact information

- NSPS monitoring/performance testing results (within 30-days of/after completion of the test(s)
    - Date of each test
    - State-issued Premise Number
    - Method 9 or Method 22 “Visible Emissions Observation Form,” or equivalent, for each affected facility
    - Results of performance test (expressed at percent opacity over a six-minute average)
- Notification of like-for-like equipment replacement (within 30-days of the change)
    - Size of existing equipment that will be replaced:
        - for crushers- rated capacity (tph);
        - for screens- total surface area, top deck (ft2);
        - for belts- width of belt (ft);
        - for bins- rated capacity (tons)
    - Size of replacement equipment that will be installed in place of the existing equipment:
        - for crushers- rated capacity (tph);
        - for screens- total surface area, top deck (ft2);
        - for belts- width of belt (ft);
        - for bins- rated capacity (tons)
- Notification of change in “saturated” equipment (within 30-days of/after the change)
    - Date
    - Proof that the saturated equipment is no longer saturated and/or
    - Proof that the unsaturated equipment is now saturated
    - Site address
    - State-issued Premise Number
    - Description/identification of equipment being changed

4-7 Permit Compliance

It is very important that the company staff who will be responsible for ensuring compliance with environmental requirements first **read** their permit thoroughly, immediately upon receiving the issued document. Many company officials have the misunderstanding that the permit's only purpose is to authorize installation or continued operation. In almost all cases, these permits will have specific terms and conditions that must be followed in order to maintain compliance with environmental laws and regulations. Upon reading the permit, if the company does find a substantive concern or mistake, the company official should contact the appropriate Ohio EPA District Office ("District Office") or Local Air Agency ("LAA") and identify these issues. See the Ohio map the identifies these jurisdictions at this web address: http://www.epa.state.oh.us/dapc/general/dolaa.html**.** The likelihood that a company will receive adequate attention to get a mistake corrected quickly in the permit is much greater if the appropriate District Office or LAA is contacted well before the 30-day period has expired for the company to appeal its permit to the Environmental Rules Appeal Committee ("ERAC"). Both Ohio EPA and the company will benefit if the matter can be quickly corrected by either a corrected or modified permit being issued. Obviously, if the mistake or problem with the permit language is serious enough and the matter was not corrected quickly, then normally with the assistance of the company's legal counsel an ERAC appeal should be filed. This filing must be made on or before 30 days from the date of issue of the final permit.

Further, upon reading the permit it is important that the requirements of the permit are understood. Again you should contact the staff member at the District Office or LAA that prepared your permit to obtain the necessary clarification. All permits will contain the boilerplate general terms and conditions and most permits will contain special terms and conditions for each emissions unit covered in the permit. The categories of special terms and conditions are described below:

1. **Applicable Emissions Limitations and/or Control Requirements.** This section covers the applicable rules that are associated with the emissions unit. We recommend that you read the applicable portion of those rules to ensure they have been properly applied in the permit. The Ohio EPA air pollution control rules can be found at the Division of Air Pollution Control's World Wide Web site: http://www.epa.state.oh.us/dapc/regs/regs.html **.** For those companies who do not have access to the Internet, they can request a copy of the appropriate rules by contacting Ohio EPA Division of Air Pollution Control at (614) 644-3689.

2. **Additional Terms and Conditions**. There are usually additional terms and conditions, specific for the source, identified for each emissions unit. These should be read carefully and fully understood.

3. **Operational Restrictions.** If operational restrictions are identified these are important requirements in permits. In many cases the company requests the restrictions in order to avoid major permitting programs, e.g., PSD and nonattainment Major NSR, and Title V. However, it is possible the operational restrictions may be required to ensure on-going compliance.

4. **Monitoring Record keeping.** These requirements are likely to be required for each emissions unit. The purpose of these requirements is for the Company to collect and record the appropriate information that ensures that the emissions unit has operated in compliance with the air pollution control requirements. It is very important to determine if the company is currently doing the required monitoring and record keeping. If not, the environmental official must immediately develop a program to establish and maintain the monitoring and record keeping requirements contained in the permit.

5. **Reporting Requirements**. This section will identify the type of reports that must be submitted to Ohio EPA. Usually, quarterly reporting requirements will be established for each occasion that a deviation of one or more requirements has occurred. Normally, an explanation of the corrective actions taken to avoid further deviations is also required to be reported. Again**,** a thorough understanding of these requirements and the preparation of complete reports are very important. It is very easy for the Ohio EPA to determine a company is in violation of its permit if it fails to submit the required reports.

6. **Miscellaneous Requirements**. This section may contain any other requirements that do not fit into any of the above-mentioned categories. In many permits this section is blank.

Also, it is recommended upon filing a permit application that the company's environmental official be proactive with the appropriate district office or LAA staff, who has been assigned the responsibility to review the application and prepare the permit. Many times, up-front communication can avoid or correct errors and could influence requirement alternatives that are more acceptable to the company.

What is the difference between a Title V permit and a State permit to operate ("PTO")? Congress has determined through the reauthorization of the Clean Air Act ("CAA") of 1990 that States must issue State/Federal Title V operating permits to the facilities that represent the greatest source of air pollution Facilities that are subject to the Title V program, are required to apply for and obtain a Title V permit to operate. In Ohio, prior to this federal requirement, all air contaminant sources were required to apply for and obtain PTO's (OAC Chapter 3745-35). It is very important to understand a fundamental difference between a Title V permit and a PTO.

One difference between the PTO and Title V permit is the requirement for the annual compliance report due by April 30 of each year. The Ohio EPA issues PTO permits with terms and conditions, for which an entity is obligated to maintain compliance and where, usually quarterly, deviation reports are required to be submitted when permit limits, parametric monitoring requirements, records or other permit requirements are exceeded or not maintained as required in the permit.

The Ohio EPA will issue a Title V permit with terms and conditions, which also require a demonstration of compliance, however, a Title V permit holder must report any violations of the terms and conditions of the permit to the Ohio EPA and USEPA. In addition to the quarterly reporting of deviations from the permit terms and limits, a Title V permit holder must also prepare a detailed compliance certification, at least annually. In Ohio, Title V permits are currently being written requiring the annual compliance certifications to be filed no later than April 30 for each preceding calendar year. Another difference between the PTO and Title V permits is that a Title V permit covers all the emissions units at the facility in one permit. A PTO only covers individual emissions units, as submitted and contained in the PTO application.

***De Minimis* Emissions Unit Exemption.** OAC rule 3745-15-05 (http://www.epa.state.oh.us/dapc/regs/3745-15/3745_15.html) allows for an exemption from the air pollution control requirements found in Chapter 3704 of the Ohio Revised Code, that includes applying for and obtaining permits. The exemption can be used (except for a few rare instances identified in the rule) if an emissions unit does not have the potential to emit more than 10 lbs per day of any air contaminant or 1 ton per year of hazardous air pollutants or if the company can maintain daily records to document that the actual emissions do not exceed these same levels. This exemption is best designed for an emissions unit that meets this criteria on an uncontrolled potential basis. If this is the case the facility, taking advantage of this exemption, simply needs to maintain the calculations that prove the potential emissions from the unit meets the exemption criteria. The facility has no obligation to notify the Ohio EPA that the exemption has been used. The facility can proceed with the installation and operation of this low emissions source.

The exemption can also be taken if the entities **actual** uncontrolled emissions **always** comply with the exemption criteria and daily records are maintained to document compliance. A facility has to ask itself two fundamental questions before it decides to utilize the exemption. First, will this emissions unit **ever** be used in a manner that the emissions would exceed the exemption thresholds? If the answer to this question is "yes", then the exemption should not be used and the permit application should be submitted. If the answer is "no", then the facility has to ask itself "will the daily record keeping be burdensome?" If the answer is "yes", the company probably should not use this exemption from the permitting process. If the answer to the question is "no" (for example, the record may already be retained for business purposes) then the exemption would prove to be more of an advantage with records that are easily maintained. Again, there is no obligation to notify Ohio EPA that a new emissions unit has been installed and operated under this exemption. However, proof of compliance for

exempted de minimis emissions units can be required by Ohio EPA upon their discovery of the new exempt units.

It is also possible that a smaller emissions unit may qualify for registration status for the PTI and either placed on PTO registration or be considered a Title V insignificant activity. To qualify for PTI registration status you must:

1. submit the PTI application, along with the request to be placed on registration status;

2. demonstrate compliance with all applicable rules, including best available technology for the unit;

3. the unit must have maximum uncontrolled emissions of less than 5 tons per year for particulate matter, sulfur dioxide, nitrogen oxides, and organic compounds;

4. the unit cannot be subject to the new source performance standards, e.g., 40 CFR 60 Subpart OOO (discussed above); and

5. the unit cannot be subject to the national emission standards for hazardous air pollutants or any U.S. promulgated standard for hazardous air pollutants.

The requirements for PTO registration status are slightly different from those of the PTI, however, if the unit qualifies for PTI registration status, it will also qualify for PTO registration, since the PTI qualifications are more restrictive.

Miscellaneous Tips

1. We do recommend that you consult with the District Office or LAA contact responsible for permitting your facility see pages 73-74. However, it should be understood that these staff may be inexperienced or unfamiliar with the aggregate industry and related operations. Therefore, the company's environmental staff should evaluate the advise provided by the District Office or LAA and should question information that he/she believes to be confusing or incorrect. Questions that cannot be answered by EPA staff who are unfamiliar with the aggregate industry would most likely be presented to a more experienced permit writer or supervisor.

2. We recommend that a company carefully develop a preventative maintenance malfunction abatement plan. This plan should be designed around the requirements established in the various air pollution control permits. The plan should provide for periodic inspection of the air pollution sources, records, and control equipment, and should provide for spare parts to be maintained for air

pollution control equipment, etc. Despite all the good efforts a company may employ to maintain compliance with its air pollution control requirements, the unexpected will likely happen at some point that may lead to a violation. However, if the Ohio EPA inspector recognizes that the company has been diligent in its effort to maintain compliance, it is likely that formal enforcement will be avoided or at least the penalty burden minimized.

3. All companies should have good documentation on the air emissions estimates at the facilities. Those estimates should look at both potential and actual emissions. These estimates influence the type of permits that must be maintained and the amount of emissions fees to be paid.

4. It is extremely important that permit holders file timely renewal Title V permit or State PTO applications. A Title V and PTO permit holder would lose its authorization to operate lawfully**,** until a renewal permit is issued unless a timely application is filed. The Ohio EPA will send an expiration notice for a PTO 6 months before it expires. The Title V renewal application is due 180 days before the permit's expiration date. The Ohio EPA will send an expiration notice for a Title V permit 18 months before the permit expiration date, and a warning letter 3 months before the application is due. Under Ohio law, an applicant who files a timely renewal application**,** continues to operate lawfully under the terms of its prior permit, until either the renewal permit has been issued or the application has been denied. For a Title V, this is called the "application shield" (OAC 3745-77-06).

Types of Permits

- **Permit to Install ("PTI") –** Any new or modified air contaminant source as defined in OAC rule 3745-31-01 must apply for and obtain a PTI prior to source being constructed or modified. The requirements for PTI's can be found in OAC Chapter 3745-31 at the following website: http://www.epa.state.oh.us/dapc/regs/3745-31/3745_31.html

Permit to Install registration status

It is possible that a smaller emissions unit may qualify for registration status for the PTI. To qualify for PTI registration status you must:

1. submit the PTI application, along with the request to be placed on registration status;

2. demonstrate compliance with all applicable rules, including best available technology for the unit;

3. the unit must have maximum uncontrolled emissions of less than 5 tons per year for particulate matter, sulfur dioxide, nitrogen oxides, and organic compounds;

4. the unit cannot be subject to the new source performance standards, e.g., 40 CFR 60 Subpart OOO (discussed above); and

5. the unit cannot be subject to the national emission standards for hazardous air pollutants or any U.S. promulgated standard for hazardous air pollutants.

The requirements for PSD PTI's can be found in OAC Chapters 3745-31-05(D) at the following website**:** http://www.epa.state.oh.us/dapc/regs/3745-31/3745_31.html

· **Major New Source Review, Prevention of Significant Deterioration ("PSD") Permit –** This is a complex PTI that covers major new projects that occur in attainment air quality locations. If an entity is subject to this type of PTI, at least six months time from filing the application should be expected prior to issuance of the permit. It will likely take an entity months to pull together this application and could take at least a year if ambient monitoring is determined to be necessary. The purpose of this complex permitting process is to ensure that the major new project will not interfere with the attainment and maintenance of the clean air quality that the area now enjoys. In many cases this complicated permit can be avoided if the entity is willing to accept restrictions on its theoretical potential emissions. These restrictions are accomplished is a less complex PTI know as a synthetic minor PTI. The requirements for PSD PTI's can be found in OAC Chapters 3745-31-11 thru 20 at the following website**:** http://www.epa.state.oh.us/dapc/regs/3745-31/3745_31.html

· **Major New Source Review for non attainment–** This is a complex PTI that covers major new projects that occur in non attainment air quality locations for which the project is to occur. Similar time frames should be expected for applying for and obtaining this PTI as for a PSD PTI. The purpose of this type of PTI is to ensure that a major new project that occurs in a nonattainment area will improve the air quality in that nonattainment area. This is accomplished by requiring emission offsets for the new project. These offsets need to be real and can be obtained by a facility shutting down existing emissions units (this is the usual method for obtaining offsets) or the purchase of offsets from an entity near the location of the project that would shutdown existing emissions units. In addition, Lowest Achievable Emissions Rate (LEAR) level of air pollution control must be achieved on each air contaminant source. In many cases this complicated permit can be avoided if the entity is willing to accept restrictions on its theoretical potential emissions. These restrictions are accomplished is a less complex PTI know as a synthetic minor PTI. The requirements for nonattainment PTI's can be found in OAC Chapters 3745-21 thru 27 at the same website described above for the PSD permit.

- **Synthetic Minor PTI –** This is a complicated but less complex PTI than a Major New Source Review PSD or nonattainment permit. This PTI requires restrictions, volunteered by the applicant, to avoid significant permitting programs such as PSD, nonattainment, and/or Title V permits. The timing on this permit may not take as long; however, you should plan on the regulatory maximum of 6 months upon filing the application. The preparation of the permit application is not as complex and will not take as long as a PSD or nonattainment, application. The requirements for this type of PTI are located in a series of USEPA guidance documents. However, the criteria from these documents is the same as the criteria provided in a synthetic minor PTO that can be found in OAC rule 3745-35-07 at the following website: http://www.epa.state.oh.us/dapc/regs/3745-35/3745_35.html#3507

- **State Permits to Operate ("PTO") –** Any air contaminant source unless it is De Minimis or exempted in OAC rules 3745-35-05(A) and/or 3745-31-03(A) (1) through (4), or a part of a Title V facility must apply for and obtain a PTO. The requirements for a PTO can be found in OAC Chapter 3745-35 at the following website: http://www.epa.state.oh.us/dapc/regs/3745-35/3745_35.html

- **PTO Registration –** The Ohio EPA may place an emissions unit on registration rather than issuing a PTO if the emissions units potential emissions for PM and SO2 are less that 25 TPY and lead (Pb) and VOC potential emissions are less than 10 TPY. The requirements for PTO registration can be found at OAC rule 3745-35-05(B) at the following website**:** http://www.epa.state.oh.us/dapc/regs/3745-35/3745_35.html#3505

- **Title V permit –** An aggregate facility in Ohio is required to apply for and obtain a Title V permit if its facility potential emissions are greater than 100 tons per year ("TPY") for PM10, CO, SO2, NOx, VOC or the facility potential emissions are greater than 10 TPY for any single hazardous air pollutant ("HAP") or greater that 25 TPY for all HAP's collectively. The requirements for a Title V permit can be found in OAC Chapter 3745-77 at the following website: http://www.epa.state.oh.us/dapc/regs/3745-77/3745_77.html

- **Synthetic Minor PTO a.k.a. Federally Enforceable Operating Permits ("FESOP") –** This is a complex form of a PTO that an entity chooses to request restrictions on its potential emissions to avoid the Title V permitting requirements. This is a good option if the entity finds that it can easily live with the restrictions. The requirements of this type of permit can be found in OAC rule 3745-35-07 at the following website: http://www.epa.state.oh.us/dapc/regs/3745-35/3745_35.html#3507

4-8 Inspection Protocol

Ohio EPA has two approaches to inspecting facilities which are announced and unannounced visits. Obviously, with the announced visits the company is provided with the opportunity to prepare for the visit. Described below are suggested procedures that companies should consider while preparing for regulatory inspections.

Before – Again if the inspection was previously announced then the company has the opportunity to get prepared for the inspection. However, since it is possible that an inspection may be conducted unannounced, the company should be ready to be inspected at anytime. Initially, be sure that the employee responsible for environmental regulations (hereinafter "environmental manager") has a good understanding of the air pollution control requirements established in the various permits (permits to install and operate). If the company is a Title V facility, the Title V permit should identify all these permitting requirements. If this is an announced visit take the opportunity to review the requirements set forth in your permits. See Section 4-7 "Permit Compliance" for more details on the permits. Take the time to ensure that any records that the company is required to maintain are well organized and readily available if the inspector requests to review them. Also, take the time to pre-inspect all the company's air contaminant sources to ensure that they are operating in compliance with the requirements set forth in the permits.

During – Once the inspector arrives at the plant, it is prudent for the environmental manager to be available to accompany the inspector and address any questions the inspector may have. Good communication with the inspector should help prevent any misunderstandings that may lead to erroneous findings by the inspector. Further, we suggest that the environmental manager point out the areas that the company has been diligent to ensure that compliance has been maintained. For example, the development and implementation of a preventative maintenance and malfunction abatement program, spare parts inventory for air pollution control equipment, etc. We suggest that you request an exit interview with the inspector. If granted, this will give the company an opportunity to immediately comment and/or work to correct any deficiencies/violations that may have been discovered.

After – It is Ohio EPA's current practice to follow-up an air pollution control inspections with either a courtesy letter that indicates that no major problems were found during the inspection or a warning letter/notice of violation that describes the problem(s) discovered during the inspection. If the company receives a warning letter, it should work to immediately correct the problem. The warning letter is the first stage of an enforcement action. Please refer to Section 4-9 Enforcement of this chapter for a thorough discussion of the enforcement process and the steps a company can take to either avoid or minimize the impact of a formal enforcement action.

4-9 Enforcement

The Enforcement events normally occur through a series of stages. It is important to recognize when an enforcement event occurs. It is also extremely important that if a company's operations violate air pollution control requirements, measures need to be taken to correct the violations as soon as possible. If a company finds itself in an enforcement situation, the company's diligence to correct the violation is extremely important on whether formal enforcement is pursued and if so the level of civil penalty that may result.

1. **District Office or Local Air Agency Warning Letter** – One or more warning letters from the Ohio EPA District Office ("District Office") or Local Air Agency ("Local Air Agency") that indicates that violations have been found. This may or may not be identified as a notice of violation. Normally, the letter will request that you respond within 14 days and if necessary provide a plan and schedule to expeditiously return to compliance. If the company can return to compliance quickly (from immediately up to 30 days) it is likely that additional enforcement action may be avoided, dependent on the severity of the violation.

2. **Director of the Ohio EPA Warning Letter** - If a company fails to respond or adequately respond (in the opinion of the District Office or Local Air Agency) to an earlier warning letter a follow-up letter may be sent by the Director of the Ohio EPA requesting a complete response to the issues raised in the letter. The company should recognize that the enforcement action has been elevated to the Ohio EPA central office. It is important to understand that a timely and complete response is necessary. Again, if all the requested information is provided in response to the Director's warning letter it may be possible to avoid any further enforcement action.

3. **Director's Final Findings and Orders –** If a company experiences a significant violation (such as violation(s) that were not corrected quickly, or if significant noncompliant emissions occurred as a result of the violation(s), or if major permitting violations (i.e., PSD, Title V, etc.) have occurred) the Ohio EPA may offer the company an opportunity to settle the claim for civil penalties for the violation(s) that have occurred by providing draft Findings and Orders. The draft Findings describe the facts of the case and the violations that have occurred. The draft Orders will require the company to pay a civil penalty within a set period of time (usually within 30 days) and, if applicable, will describe the actions the company must take to return its facility into compliance and will include a

timetable. A table showing how the proposed penalty was calculated will also be attached. This offer will be made with a request that the company provide a timely response to the offer and if necessary schedule a meeting to resolve any disputed issues that may exist with the draft Findings and Orders. The Ohio EPA also encourages that the company have legal counsel represent them during these settlement negotiations. It is important to understand that these Findings and Orders ultimately have to be acceptable to the company because a waiver to appeal this document to the Environmental Rules Appeal Committee (ERAC) will be a necessary part of the negotiated Findings and Orders. It is also important to understand that almost all enforcement actions that are pursued at this level will seek monetary civil penalties. Please refer to the civil penalty section that is discussed later in this document.

4. **Court Orders –** The Ohio EPA may refer violations to the Ohio Attorney General's office requesting that appropriate court action be pursued to resolve the violations. In general, the Ohio EPA would request this assistance if it had attempted and failed to reach an acceptable resolution of the violation(s), or if significant violations have occurred for which large civil penalties have been calculated.

   Again, the AGO prefers to resolve the violations consensually and avoid lengthy litigation. A letter requesting whether the company is interested attempting to negotiate a resolution will be sent requesting a prompt response. It will likely be followed with a draft complaint and consent order for discussion. If the negotiations are timely and successful, then both negotiated documents will be filed with the court and the matter is resolved. If the negotiations do not result in a timely resolution, the AGO will likely file the complaint with the local court and receive a court date to hear the dispute. Again, it is still possible to reach a negotiated resolution but a deadline has been set in order to potentially reach agreement.

Civil Penalties – In accordance with Ohio Revised Code ("ORC") Section 3704.06(C) [http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC], a person who violates ORC Section 3704.05 shall pay a civil penalty of not more than twenty-five thousand dollars for each day of each violation. As you can see the maximum penalties are significant, however, it would be rare that the Ohio EPA would pursue the maximum penalty amount. Therefore, Ohio EPA in an effort to be consistent with the assessment of civil penalties has chosen to follow USEPA's Clean Air Act Stationary Source Civil Penalty Policy [http://www.epa.gov/Compliance/resources/policies/civil/caa/stationary/penpol.pdf]. It is Ohio EPA's current practice to provide a copy of the civil penalty calculation to the company during the settlement negotiations for comment. Briefly, the penalty policy has a two prong approach. First, it attempts to establish a penalty level that represents the amount of money gained by the company as a result of the violation. This is known as the "Economic Benefit" portion of the calculation. This portion of the penalty (once the facts have been determined to be correct) will not be negotiated unless a company can

prove an inability to pay this level of penalty. If your company believes this to be the case, financial documents including tax return data will be requested in order to confirm the hardship. Also, even though this portion of the penalty is not negotiable it is important that you point out errors of fact that you believe may be the case. It is possible that you can significantly lower this portion of the penalty by insuring that the facts that are inputted into the financial model that is used under the policy are correct. The other part of the policy calculates the amount of gravity (severity) the violation(s) represent. The areas that the gravity portion of the policy usually evaluates are the length of time that the violation(s), the amount above the standard that was violated, toxicity of the pollutant(s), sensitivity of the environment, importance to regulatory scheme, size of the violating company, compliance history, and extenuating circumstances that warrant adjustment (either mitigating or augmenting). The gravity portion of the policy is negotiable and the company has an opportunity to present facts that represent cooperation and diligence to correct the violations. This type of information may result in a portion of the gravity penalty being mitigated. Again, the facts used in this portion of the penalty calculation should be reviewed and corrected if errors are found. If applicable, a third component of the civil penalty calculation will include penalties for failing to obtain an Ohio EPA permit to install prior to installation of a source, or operating a source without obtaining a permit to operate.

Criminal Penalties – The Ohio EPA can pursue criminal enforcement penalties in accordance with ORC Section 3745.99 [http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=PORC]. It is very rare that these types of enforcement actions occur. An example of criminal behavior would be to knowingly provide Ohio EPA with false data. Criminal violations can not only result in high monetary penalties but it can also lead to imprisonment of the company official(s) responsible for the criminal behavior.

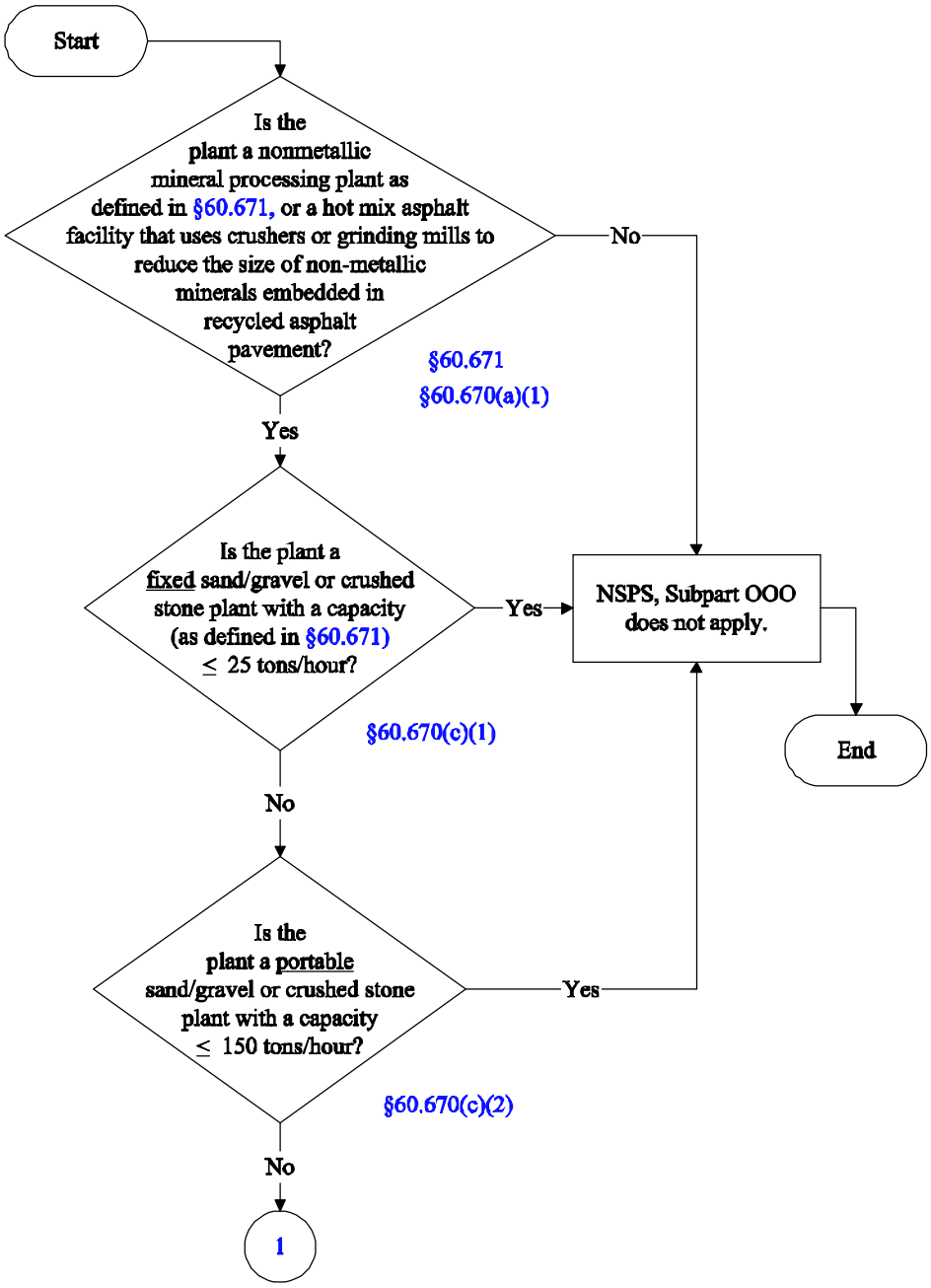
USEPA Enforcement Actions – It is possible the USEPA may choose to take an enforcement action against an Ohio company. However, Ohio EPA pursues a vast majority of the air pollution enforcement taken in Ohio. When USEPA takes enforcement action it is usually with large facilities. The types of actions that may be taken are Section 114 information requests, Notices of Violations, Section 113 Administrative Orders, and Federal Court Orders.

Flow-Chart for NSPS Performance Standards for the Nonmetallic Mineral Processing Plants
(40 CFR Part 60, Subpart OOO)

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

40 CFR 60, Subpart OOO

(1 of 12)



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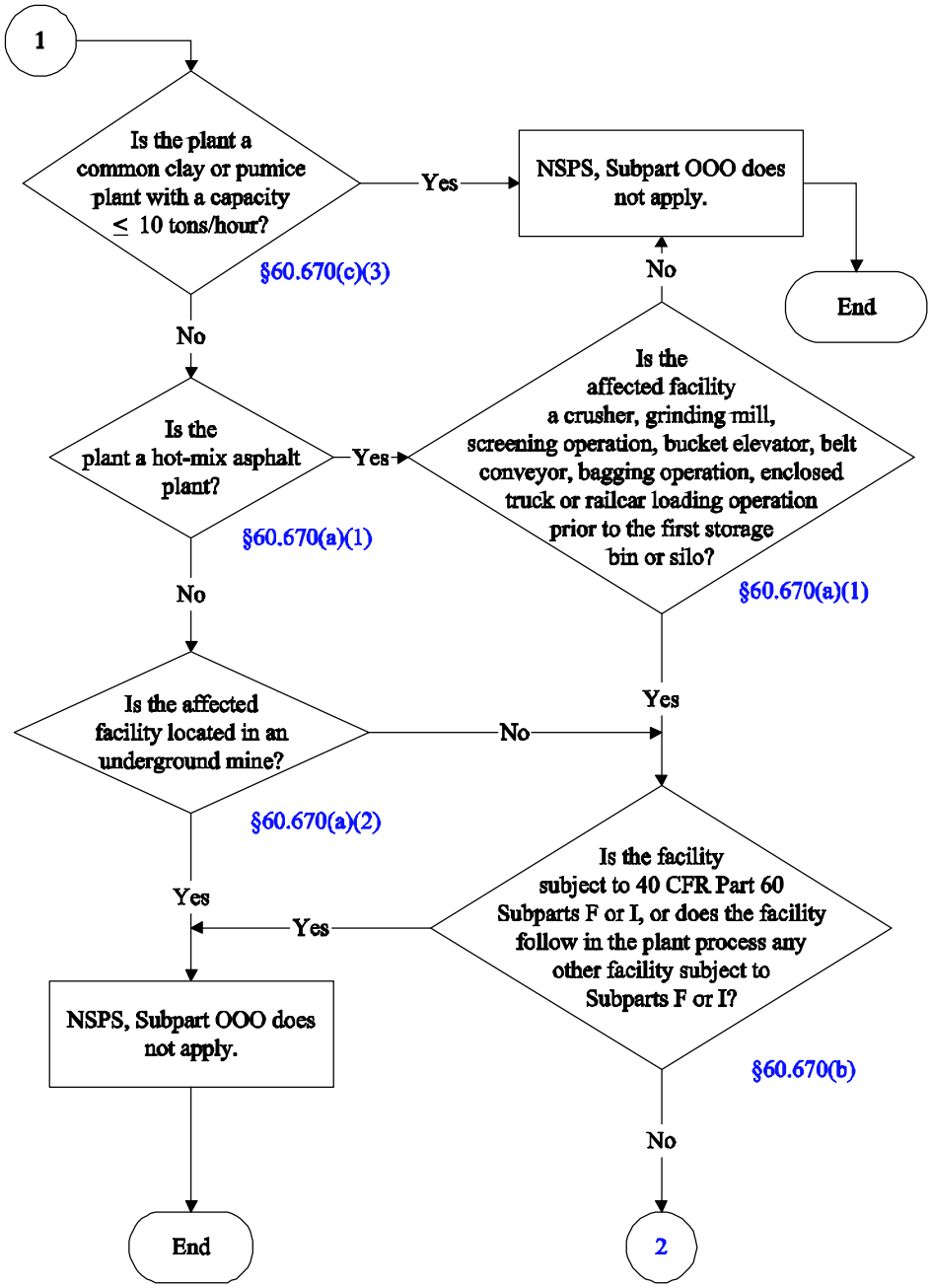
These flowcharts are for use by sources subject to the Federal Operating Permit Program and are subject to change.

40 CFR 60, Subpart OOO

(2 of 12)



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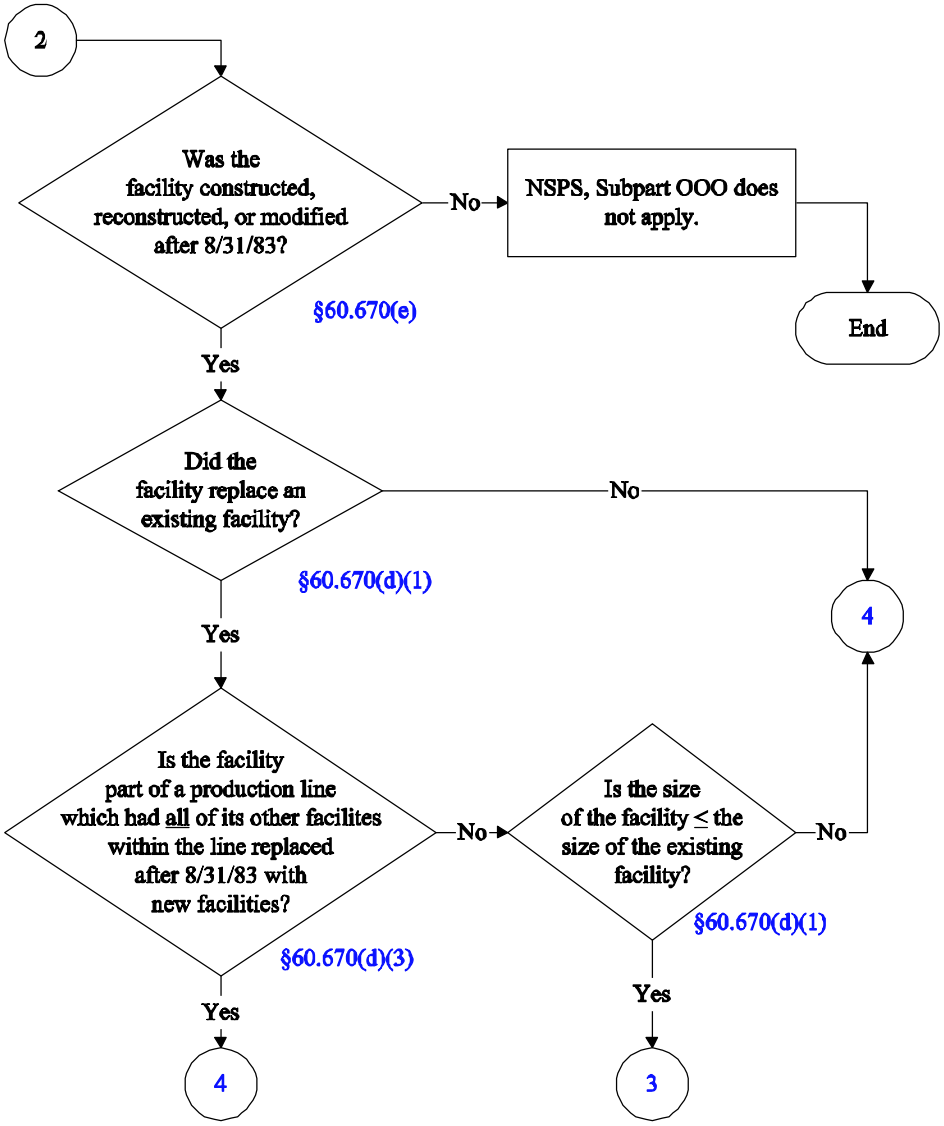
40 CFR 60, Subpart OOO

(3 of 12)



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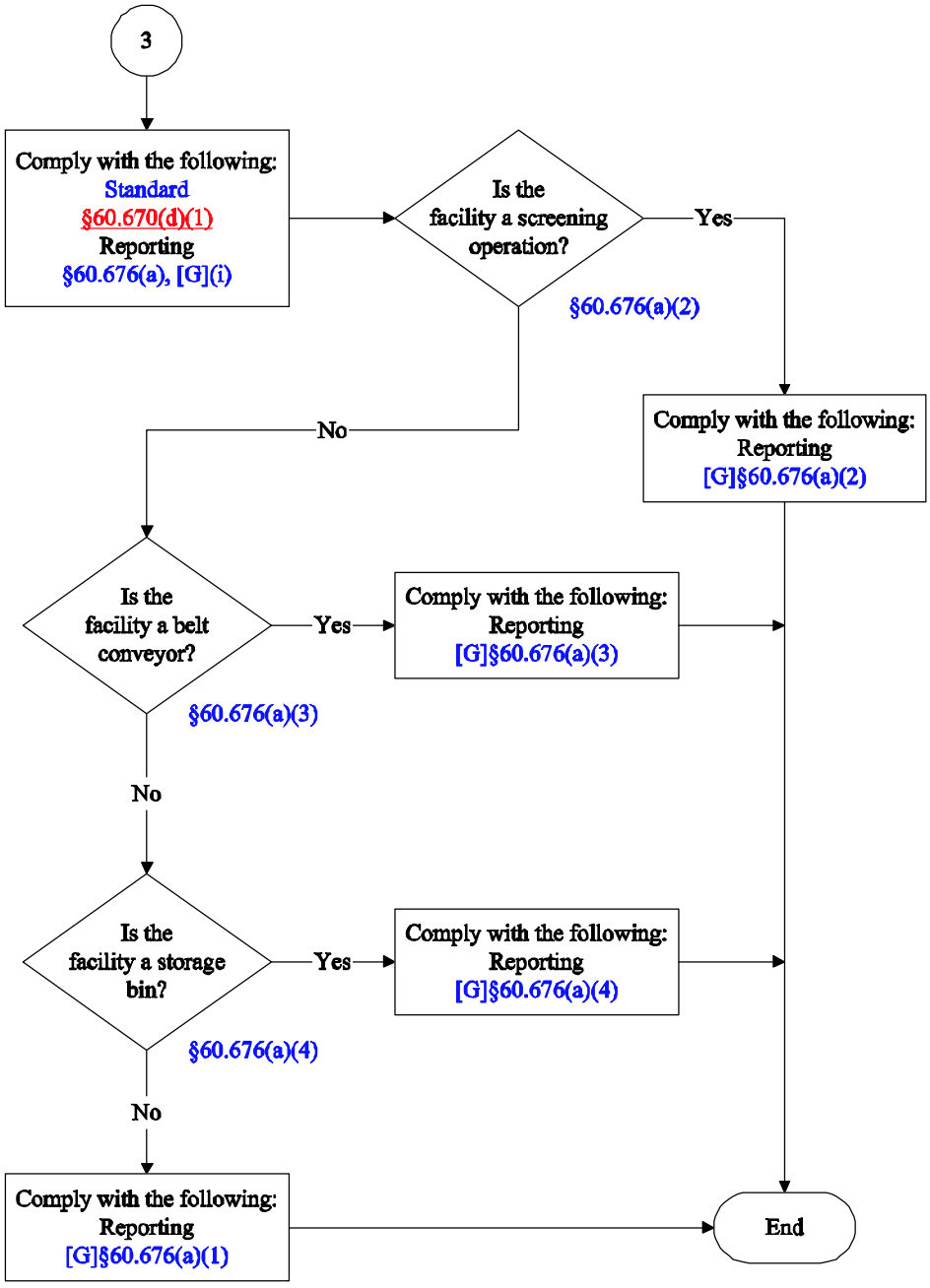
(4 of 12)



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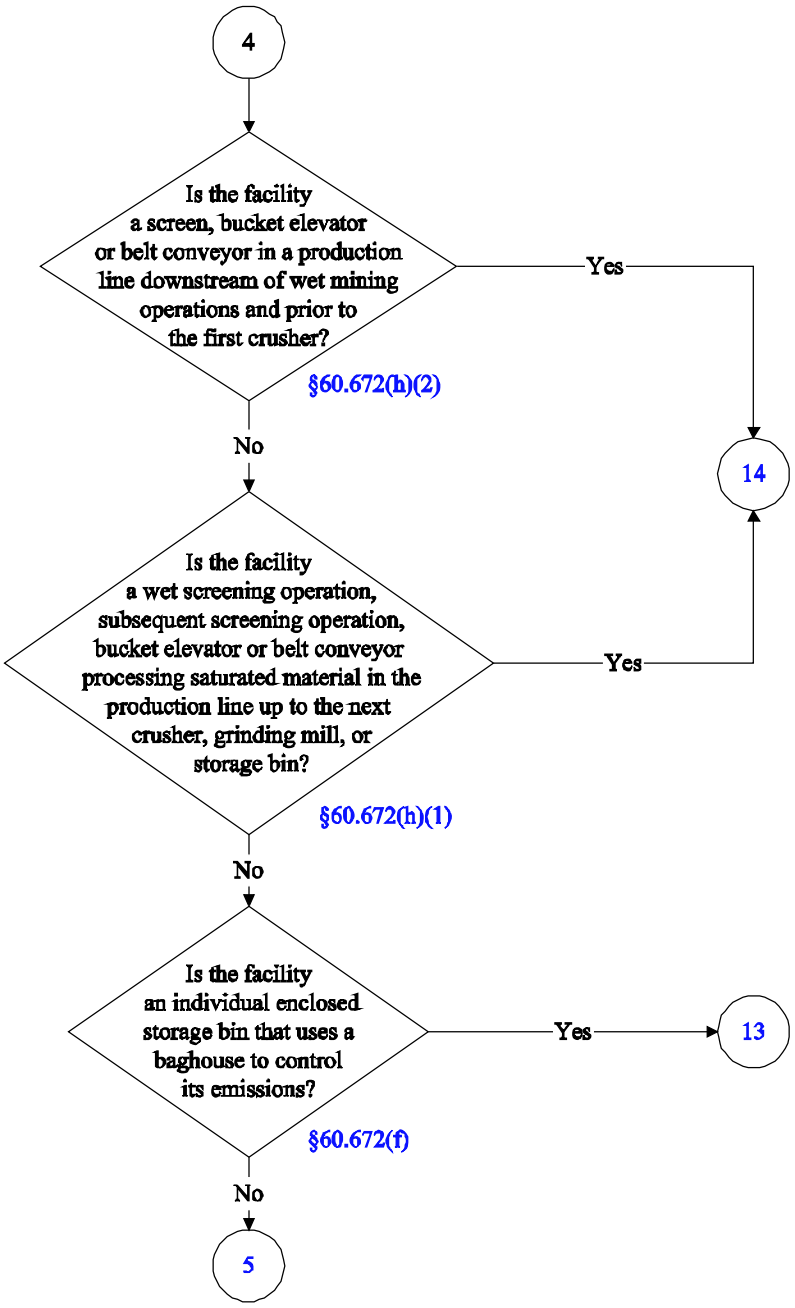
(5 of 12)



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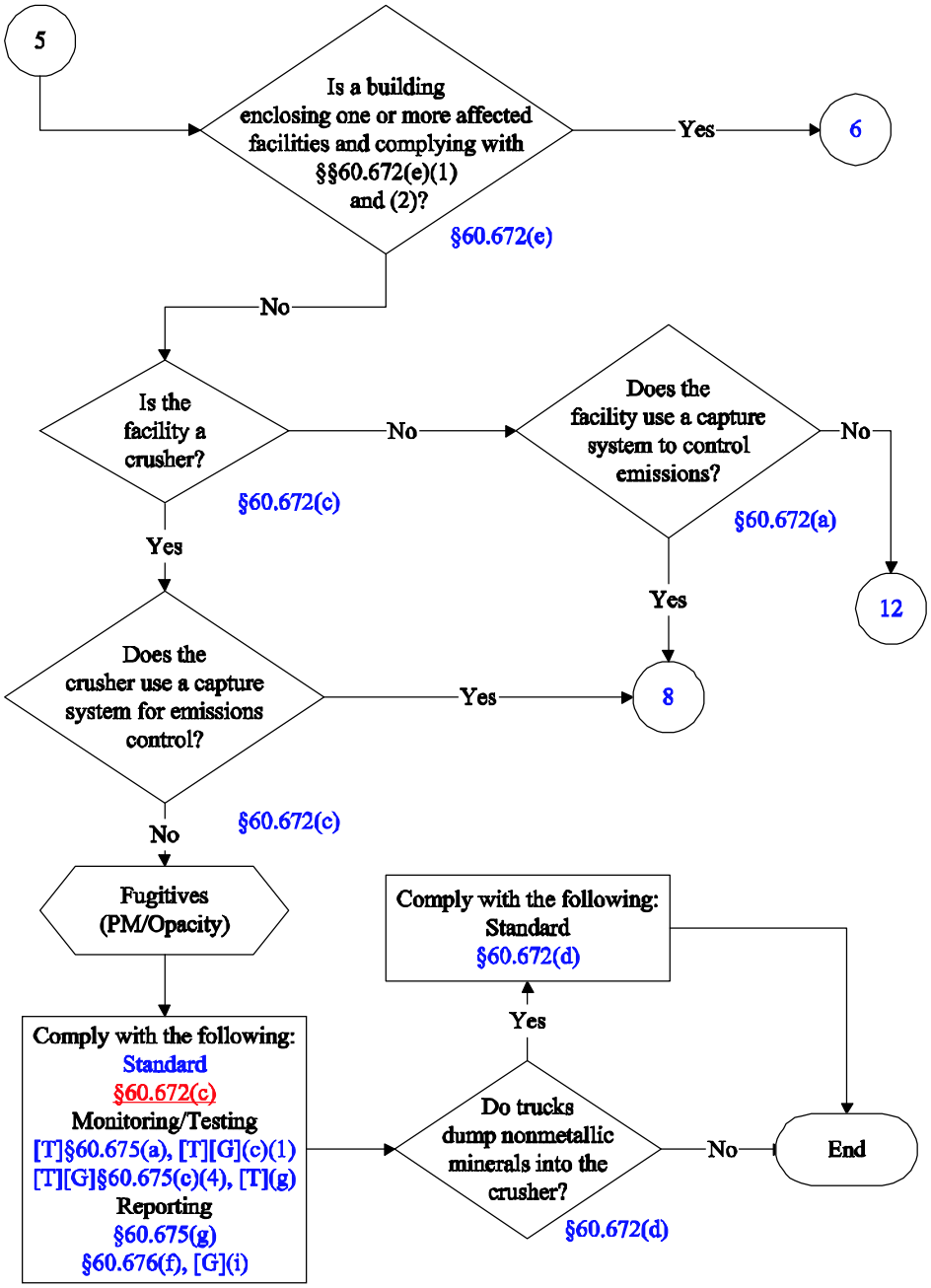

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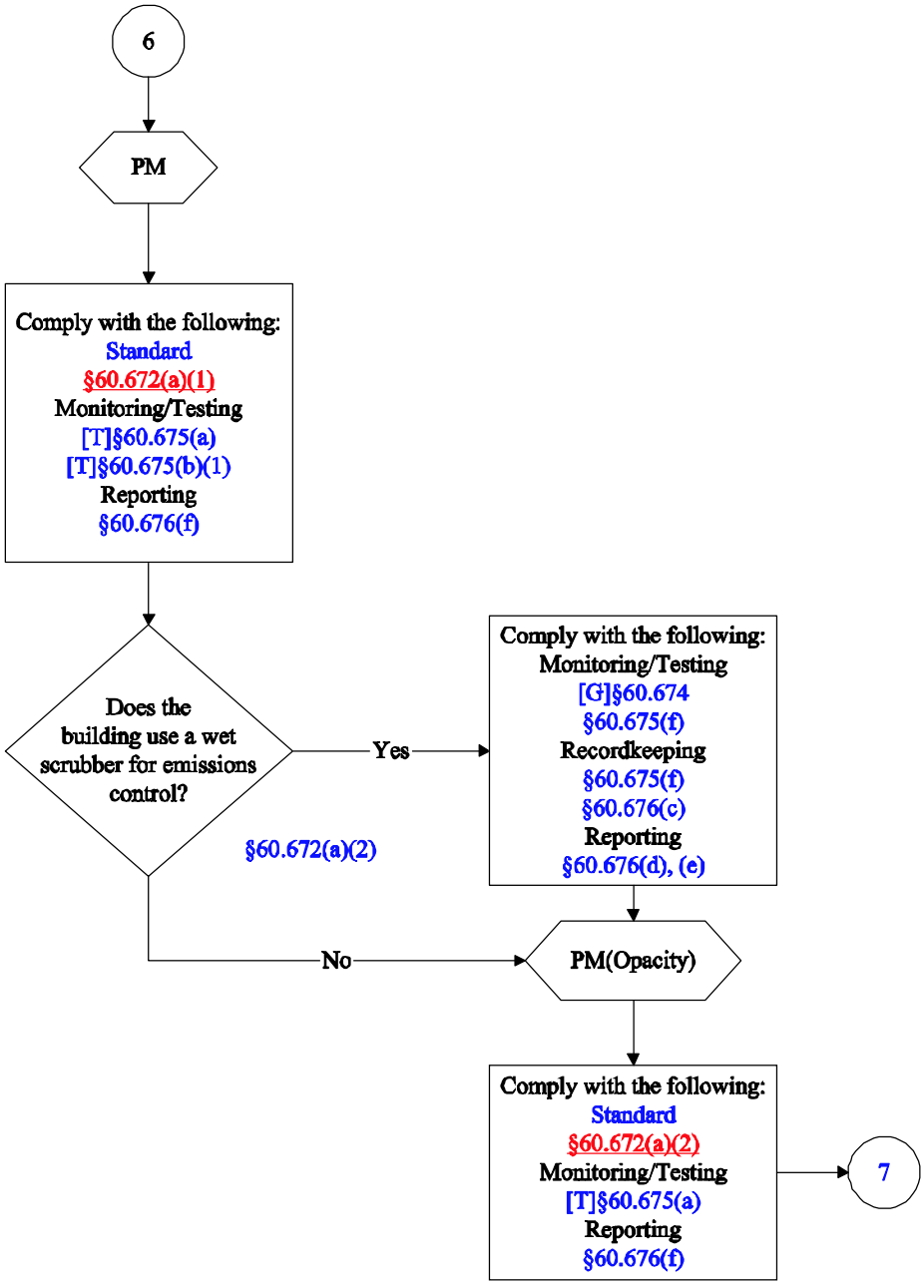
(7 of 12)



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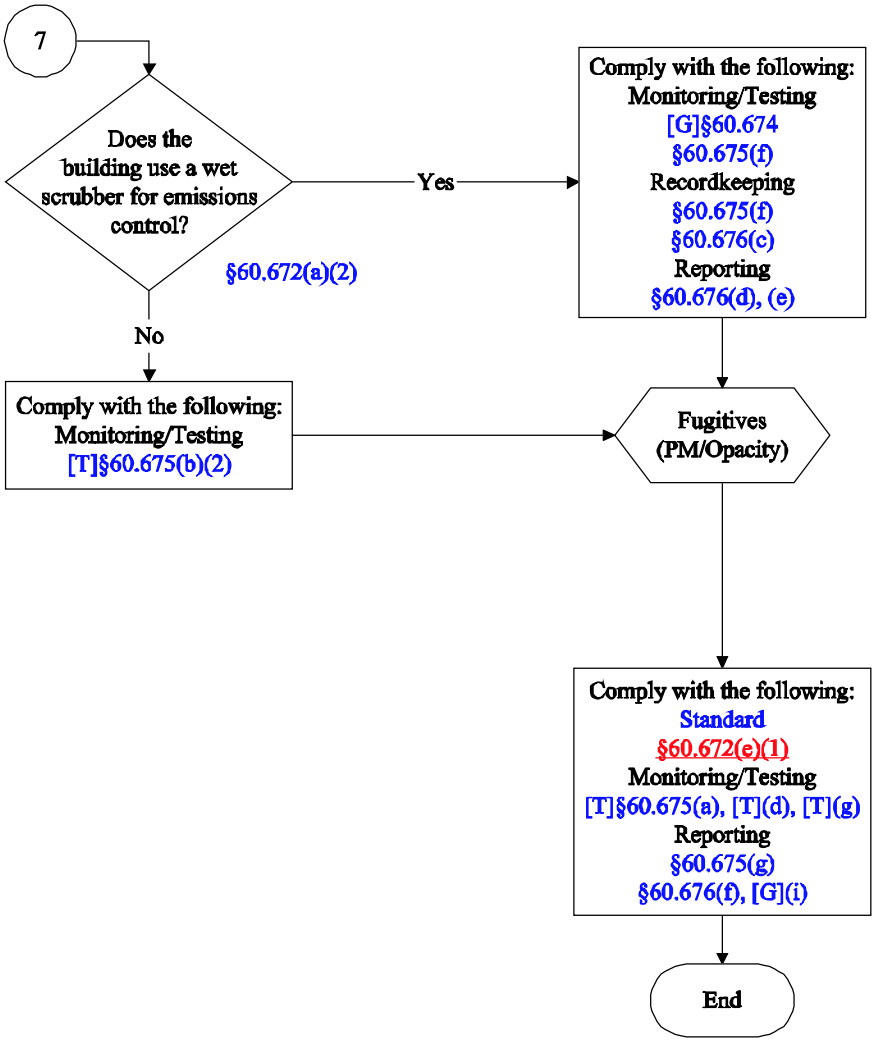
(8 of 12)



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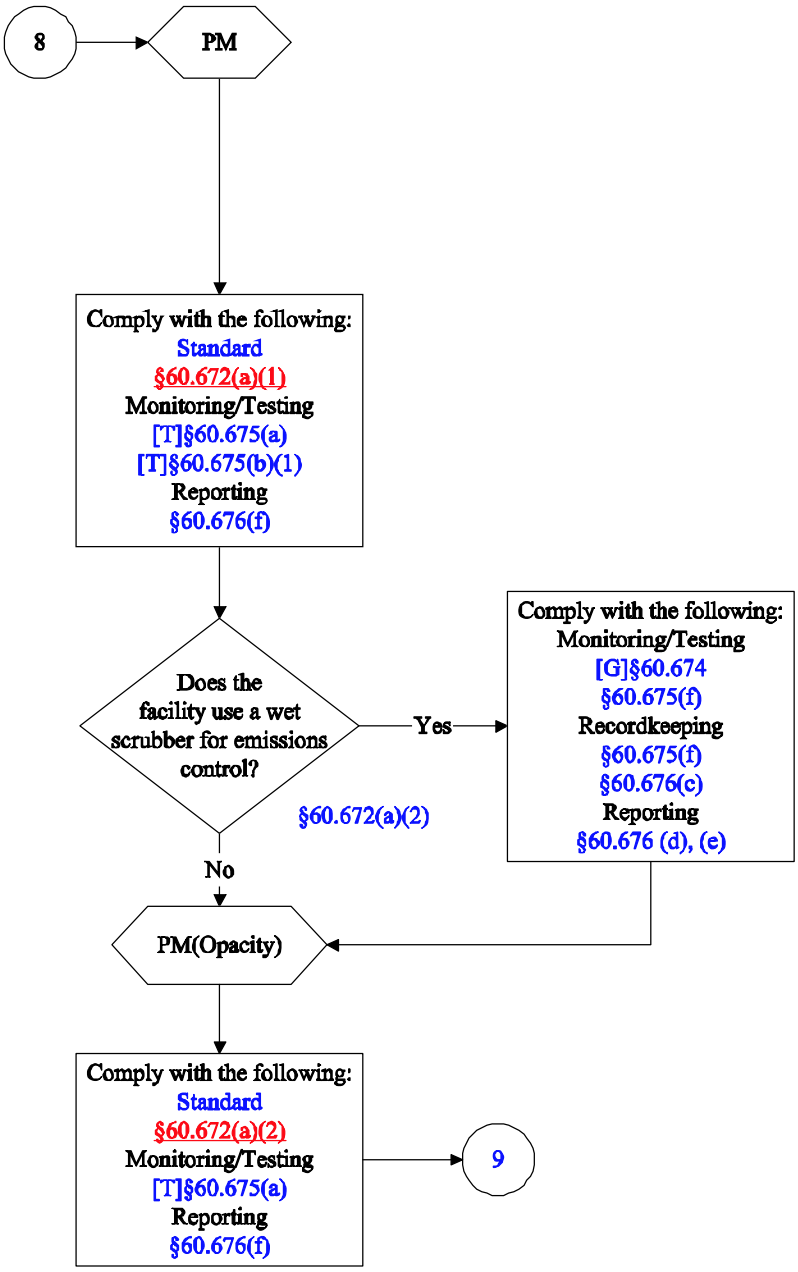
(9 of 12)



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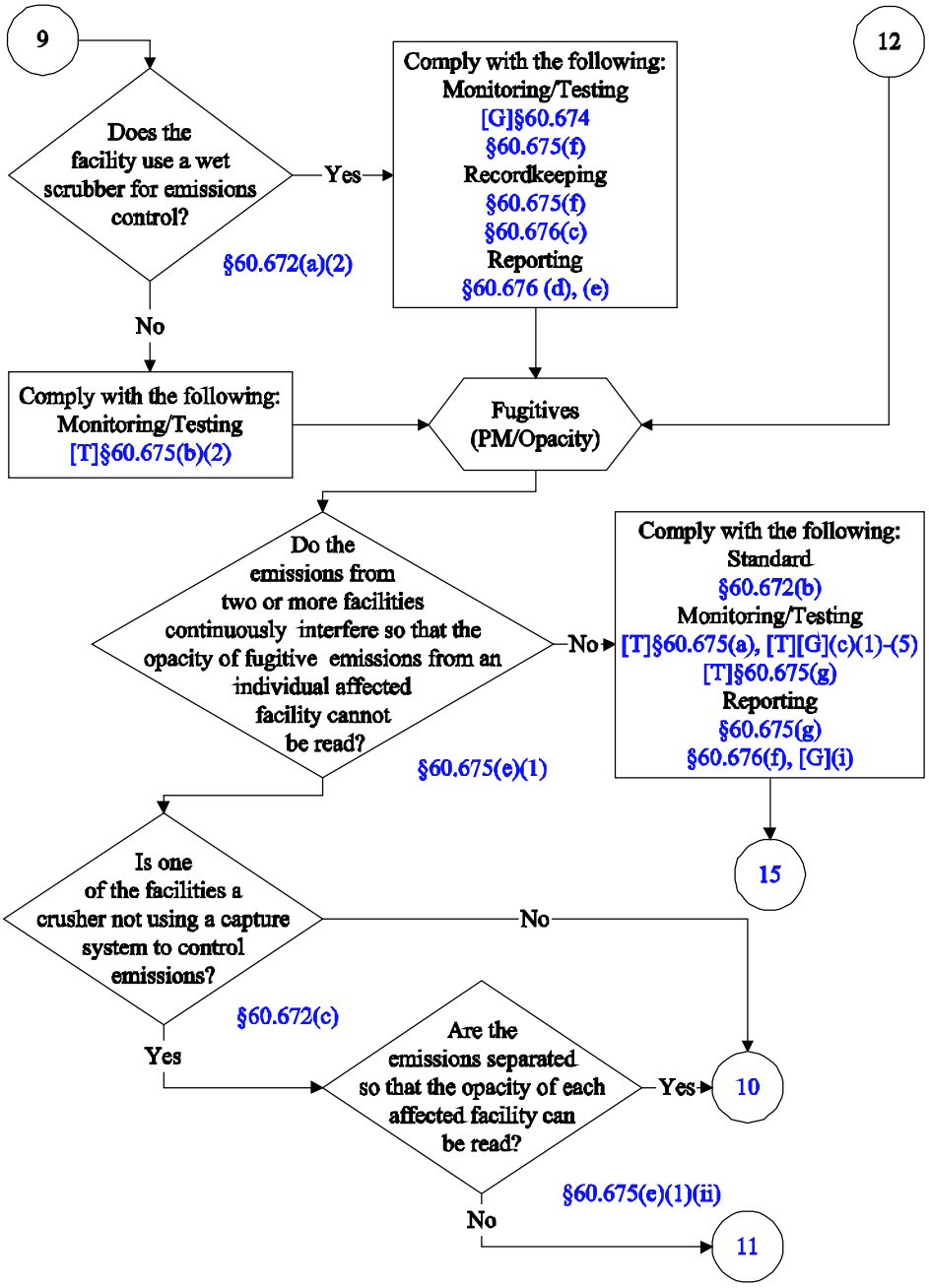

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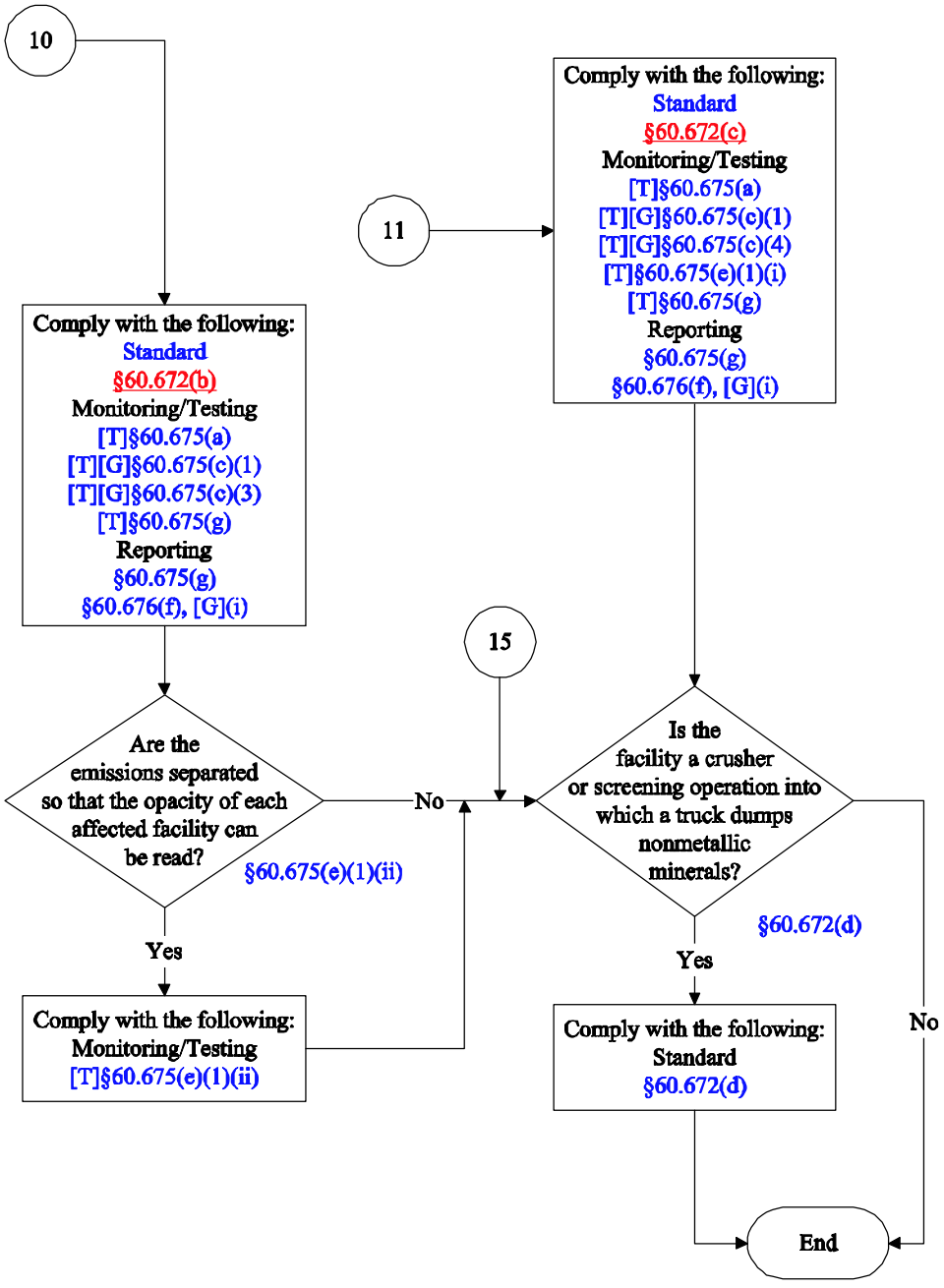

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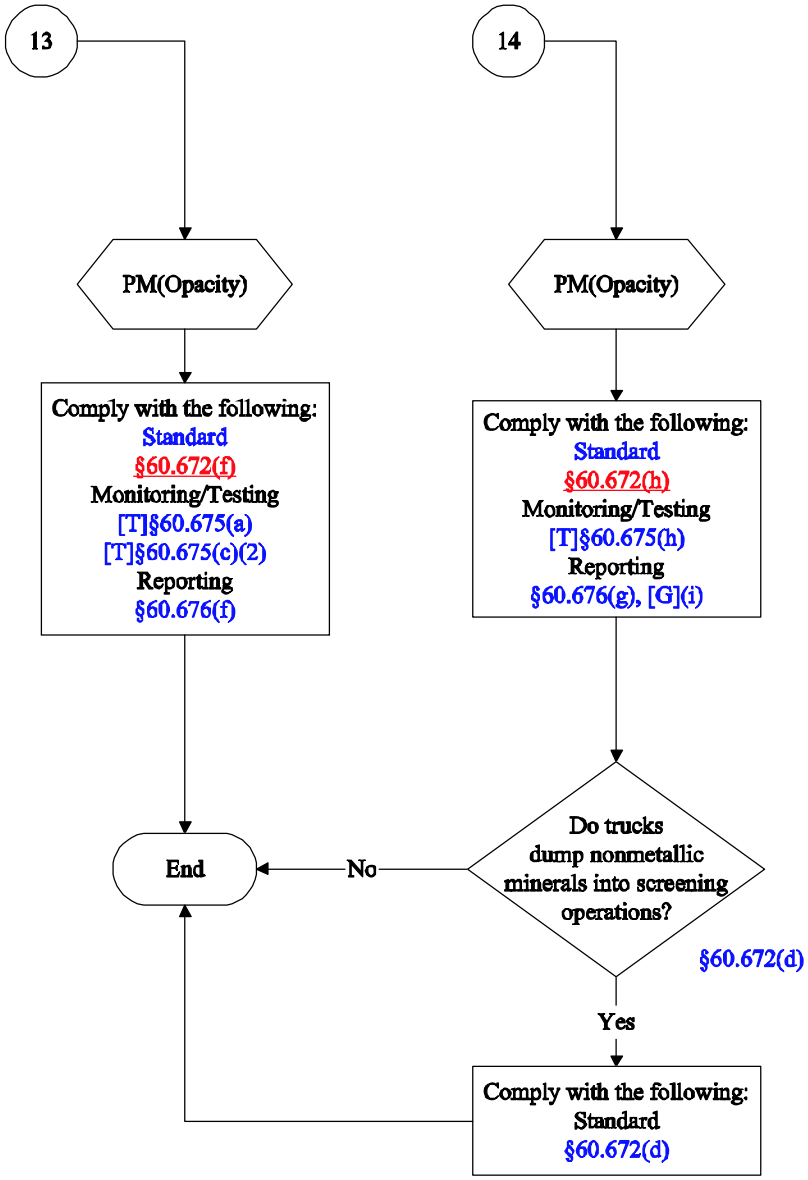
(12 of 12)



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Appendix

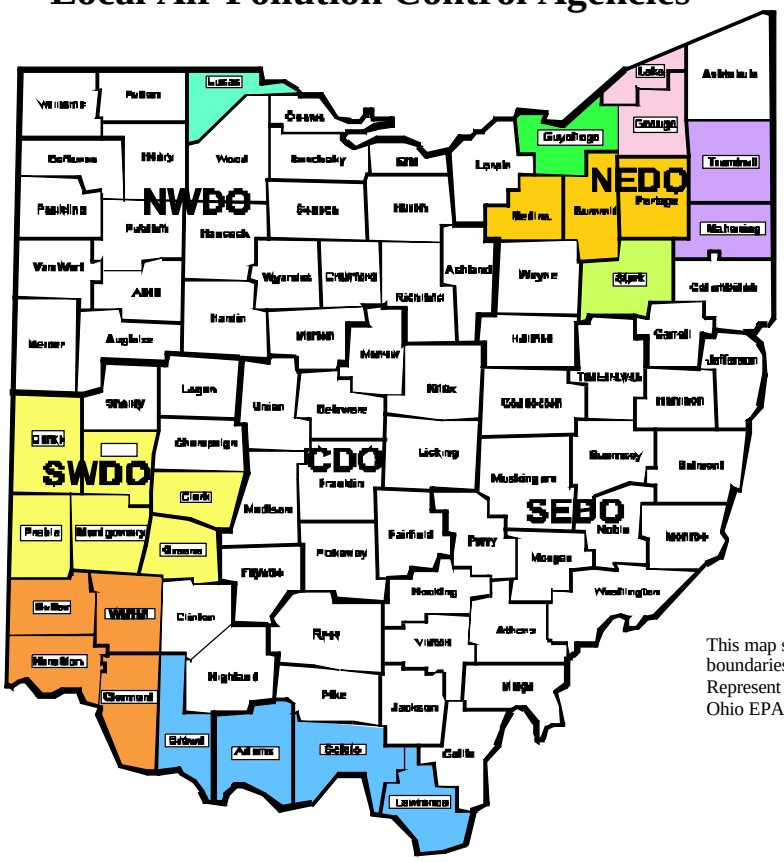
Chapter 4

Air Permits

Ohio EPA Jurisdiction Maps

Local Air Pollution Control Agencies

Division of Air Pollution Control
Ohio EPA, Central Office
(614) 644-2270



This map shows jurisdictional boundaries. Shaded areas Represent local agencies within Ohio EPA districts.

16

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OhioEPA

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isaac.robinson@epa.state.oh.us

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NWDO
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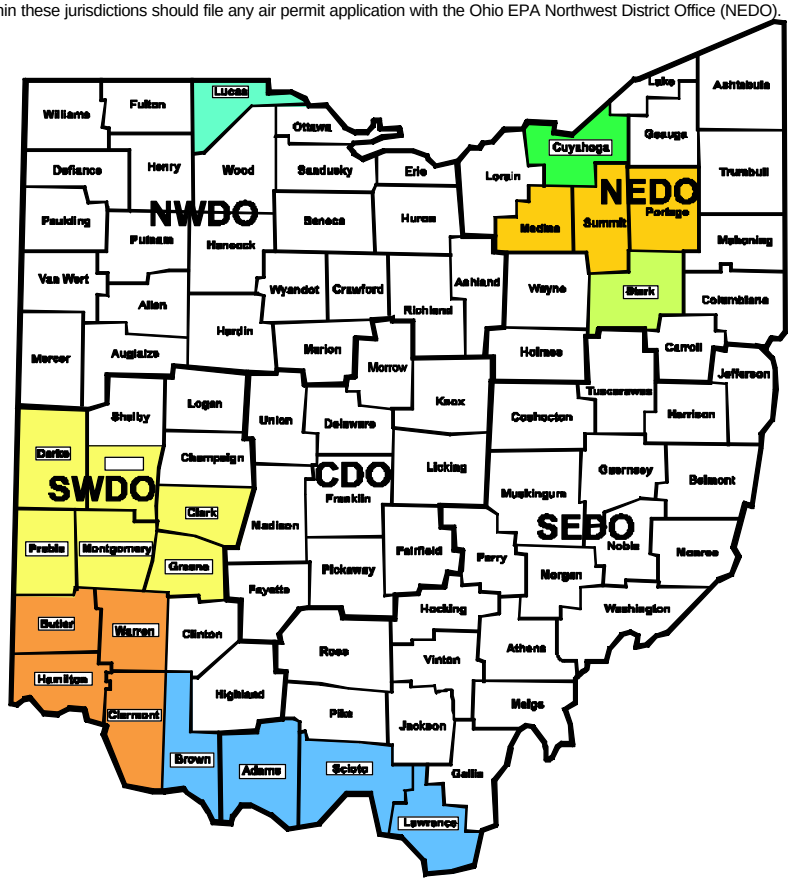
don.waltermeyer@epa.state.oh.us

SWDO
05
APC Supervisor
Southwest District Office
401 E. Fifth St.
Dayton, OH 45402-2911
(937) 285-6357 FAX#(937) 285-6249

Air Permit Review Agencies

4/05 * Facilities located within these jurisdictions should file any air permit application with the Ohio EPA Northwest District Office (NEDO).



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