

## INCORPORATING PERMANENT FEDERAL CONSENT DECREE REQUIREMENTS INTO ROPS

The following steps should be taken when incorporating permanent conditions from a federal consent decree into a Renewable Operating Permit (ROP). Consent decrees have a termination date; however, they can require a company to apply for a Permit to Install (PTI) in order to make specified provisions in the consent decree permanent applicable requirements. The resulting PTI conditions are ultimately rolled into an ROP. To ensure that these conditions originating from the consent decree remain permanently in place, they must be properly denoted as such in the ROP. These steps will prevent permit conditions that were derived from a federal consent decree from being removed during a future PTI or ROP modification because the conditions will specifically be identified as having been derived from a federal consent decree.

1. Use the following UAR in ROPs for PTI conditions derived from a consent decree that must live on after the consent decree is terminated: **(Act 451, Section 324.5503(b))**. Section 324.5503(b) outlines the powers of the department that include issuing permits to assure compliance with all applicable requirements of Act 451, associated rules, and the Clean Air Act.
2. A consent decree/PTI will often contain numerous definitions that must be added to Appendix 1 of the ROP. Include them as **Appendix 1-B, Definitions Applicable to Specified Permit Conditions**. In addition, the conditions in the PTI from the consent decree will have a footnote 4 as per step 3 below. The ROP's original "Acronyms and Abbreviations" should be named Appendix 1-A.
3. Each condition from a consent decree needs to have both a footnote 2 (since the consent decree conditions must first be incorporated into a PTI), and footnote 3 added, and, if applicable, a footnote 4. The footnotes shall read as follows:

<sup>2</sup>This condition is federally enforceable and was established pursuant to Rule 201(1)(a).

<sup>3</sup>This condition is federally enforceable and was originally established in the consent decree settling, "U.S. v *Company*, Civil Action No. \_\_\_\_-\_\_\_\_" and also pursuant to Act 451, Section 324.5503(b), and will remain in effect after termination of the consent decree.

<sup>4</sup>Definitions specific to this condition can be found in Appendix 1-B, Definitions.

4. The consent decree can include provisions that do not necessarily fit well in the permitted tables, so they can be added to the ROP as an Appendix. When adding an appendix that contains references from a consent decree, the following paragraph should be added below the appendix heading:

This Appendix is federally enforceable and was established pursuant to Rule 201(1)(a). This Appendix was originally established in the consent decree settling, "U.S. v *Company*, Civil Action No. \_\_\_\_-\_\_\_\_" and also pursuant to Section 324.5503(b) of the Natural Resources and Environmental Protection Act, 1994 Act 451, as amended, and will remain in effect after termination of the consent decree. Definitions specific to this Appendix can be found in Appendix 1-B, Definitions. **(Act 451, Section 324.5503(b))**

5. Conditions in the consent decree that are obsolete (i.e., date has passed) can be removed if appropriate and in consultation with EPA.