

**PROCEDURE FOR IDENTIFYING AND INCORPORATING APPLICABLE REQUIREMENTS FROM
EXISTING CONSENT ORDERS AND JUDGMENTS INTO RENEWABLE OPERATING PERMITS
September 17, 2003**

BACKGROUND

The purpose of this procedure is to provide some clarification and guidance to the permit reviewers as to what conditions of existing state and federal Consent Orders and judgments are appropriate to include as conditions of the Renewable Operating Permits (ROP). In developing the definition of “applicable requirement” as it is contained in Rule 101, it was the intent of the rule to include just the necessary conditions of the settlement documents in the ROP’s, and not the conditions that were above and beyond what was needed to ensure compliance from the technical aspect. Specifically, the conditions relating to emission limits, testing, monitoring, record keeping, and other air quality rule requirements should be looked at to determine the appropriateness of including the ROP, and not legal conditions relating to the boilerplate language, fines, etc. Thus, subpart (iv) of the definition of “applicable requirement” is as follows: “A term or condition of an order entered pursuant to the act that is necessary to ensure or demonstrate compliance with any other applicable requirement.”

When a permit reviewer is determining whether or not a condition of an order or judgment should be included in the ROP, the following test should be applied: “Is this condition **necessary to ensure or demonstrate** compliance with **another applicable requirement**?”. If the condition meets this “test” it is appropriate to include it in the ROP. The following procedure gives more specific direction as to what conditions typically fall into the definition of an applicable requirement. Also, since this definition is based on the permit reviewer knowing what the other applicable requirements are, it would be beneficial for them to review the conditions of the orders and judgments last.

Additionally, Region V of the United States Environmental Protection Agency (EPA) has given the state guidance on what terms and conditions from **federal** Consent Orders or judgments need to be included in the ROPs. EPA has stated that a term or condition of an order or judgment should be included in the ROP if the condition was added to address the specific rule or requirement violated (e.g. a condition of a federal order requires the company to perform stack testing in accordance with NSPS OOO standard and the order was entered due to a failure by the company to perform testing in accordance with the NSPS OOO standard). Also, any condition of a federal order included in a compliance schedule that has not been met, or which the date for compliance has not passed should be included in the ROP.

PROCEDURE

- 1) Determine if the order/judgment has previously been terminated.
- 2) Review the terms and conditions of the applicable Consent Order/judgment.
- 3) Determine the earliest termination date as specified in the order, and/or review any pending termination requests from the company for acceptability. If a termination request is acceptable to the District, send an email to the appropriate enforcement staff to let them know you agree with the request to terminate the order. If the order/judgment is to be terminated by the ROP issuance date, then none of the terms and conditions of the order/judgment should be incorporated into the ROP. Thus, no future steps are necessary for incorporation of the document into the ROP.
- 4) Identify all paragraphs of the settlement document which fall within the definition of “applicable requirement.” The following are guidelines for determining appropriateness of including specific conditions:
 - a) Conditions listing emission limits.

- b) Testing requirements, if those requirements haven't already been met, or if they are an ongoing requirement.
- c) Visible emissions conditions.
- d) Recordkeeping requirements.
- e) Conditions limiting usage rates (gallons/hr, etc.).
- f) Malfunction/abatement plans.
- g) Fugitive dust plans.
- h) Preventative maintenance plans.
- i) Emergency response plans.
- j) Conditions which restrict input/output levels.
- k) Monitoring requirements (Company shall monitor and record the temperature of the incinerator on an hourly basis).
- l) Interim Emission Limits, if the date has not passed.
- m) Conditions that limit operation of process, e.g. "shall not operate plastic parts coating booth unless dry filters are in place."

This list is not intended to be all inclusive. Rather it was designed to give the permit reviewer examples of which conditions are considered to be applicable requirements.

- 5) Compare the language and limits specified in the Consent Order/judgment with any similar conditions contained in NSR permits and being requested in the ROP application to determine consistency.
- 6) If the ROP contains limits or requirements which will be in conflict with the Consent Order/judgment (i.e. an emissions limitation that is higher or lower than it was in the NSR permit and Consent Judgment), or if an NSR permit which is incorporated into the order/judgment will be voided upon issuance of the ROP, email/notify the Enforcement Unit district contact and inquire whether it is appropriate or not to modifying the settlement document.
- 7) The permit reviewer should ensure that any attached appendices of the Consent Order/judgment are also included as conditions in the ROP. Examples are malfunction abatement plans, fugitive dust plans, etc.
- 8) Certain conditions in the Consent Orders/judgments may now be covered by a general condition of the ROP. Examples of this are the Opacity requirement, right of entry provision, and notification of abnormal conditions. If a condition, as listed in the Consent Order/judgment is redundant with the general condition, they do not need to be duplicated in the special conditions of the ROP. However, if the condition as specified in the order/judgment is more stringent than the general condition, it should be used instead.
- 9) Conditions that contain dates which have already passed, and the requirements of that condition have been met should not be included in the ROP.
- 10) Terms and Conditions of Consent Orders/judgments that do not fall under the definition of an applicable requirement, and thus should not be included in the ROP include:
 - a) Force Majeure (Consent Judgments only)
 - b) Dispute Resolution (Consent Judgments only)

- c) Stipulated Settlement
 - d) Stipulated Penalties
 - e) Jurisdiction language
 - f) Retention of Jurisdiction language
 - g) Termination
 - h) Severability
 - i) Modification clauses
 - j) Third Parties
- 11) After all of the appropriate terms and conditions of the Consent Order/judgment are incorporated into the ROP, the permit reviewer should include the specific paragraph and document number as the underlying applicable requirement (e.g. Paragraph 5(a)(3) Consent Order AQD No. 35-2002). The reviewer should also cite any other applicable requirement for each condition, such as Rule 632 for a lbs/gal VOC limit. Please note that the underlying applicable requirement for conditions of a SIP order is the SIP itself.
- 12) See the “ROP Shell Instructions” in the ROP Manual (4.B) for guidance on writing the language of special conditions. The following is a summary list of the Consent Order/judgment specific instructions found at various locations in the ROP Shell Document.
- a) Consent Orders or Judgments: If a source has a Consent Order or judgment, the following language should be included on the Authority and Enforceability page after the last line:
 - »This permit does not relieve the permittee from any responsibilities or obligations imposed on the permittee, at this source, under Consent Order/Judgment Number ____, entered on _____ between EGLE and the permittee.
 - b) The following condition should be added to the Source-Wide Conditions under “Other Requirements.”
 - »Consent Orders: The conditions contained in this ROP for which a Consent Order is the only identified underlying applicable requirement shall be considered null and void upon the effective date of termination of the Consent Order. The effective date of termination is defined for the purposes of the conditions as the date upon which the Termination Order is signed by the Chief of the AQD.
 - »Consent Judgments: The conditions contained in this ROP for which a Consent Judgment is the only identified underlying applicable requirement shall be considered null and void upon the effective date of termination of the Consent Judgment.
 - c) Footnote 1 is used for any special condition in the ROP that is “state only” enforceable.
 - »This includes special conditions that were established in a PTI or Consent Order/Consent Judgment pursuant to Rules 224, 225 and 901.
 - d) The entire underlying applicable requirement(s) must be identified for each condition and should be in bold type at the end of the condition. {e.g., **(R 336.1213(3))**}. An underlying applicable requirement may be a state rule or a federal regulation. In addition, if a Consent Order or Judgment exists for the source, any conditions from the order or judgment which are incorporated as requirements must identify the Consent Order or Judgment Number and the specific paragraph number in addition to the underlying applicable requirement(s). All appropriate underlying applicable requirements should be identified.