Department of
Environmental Protection

Jeb Bush
Governor

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Colleen M. Castille
Secretary

NOTICE OF PERMIT

E-CORRESPONDENCE
estimating@counts.cc

Counts Construction Company
3021 NW 21st Street
Ocala, FL 34475

Attention: Glen Counts, President

Marion County - AP
Drum Mix Asphalt Plant
DEP File Number: 0830001-005-AC

Dear Mr. Counts:

Enclosed is Permit Number 0830001-005-AC to construct the above referenced source issued pursuant to Section(s) 403.087, Florida Statutes (F.S.).

Any party to this order (permit) has the right to seek judicial review of the permit pursuant to Section 120.68 F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the permitting authority in the Legal Office; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 (thirty) days from the date this Notice is filed with the Clerk of the permitting authority.

Executed in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

L.T. Kozlov, P.E.
Program Administrator
Air Resources Management

Date: 9-8-06

LTK/jt

Copy: James Show, P.E., **(bruno@grovescientific.com)**
Caroline Shine, FDEP

FILING AND ACKNOWLEDGEMENT FILED, on this date, pursuant to §120.52(11), Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Dina Jones — Clerk

Sept. 11, 2006 — Date

CERTIFICATE OF SERVICE

This is to certify that this NOTICE OF PERMIT ISSUANCE and all copies were mailed before the close of business on Sept. 11, 2006 to the listed persons, by _____.

Department of Environmental Protection

Jeb Bush
Governor

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Colleen M. Castille
Secretary

Permittee:
Counts Construction Company
3021 NW 21st Street
Ocala, FL 34475

Attn: Glen Counts,
President

Facility Number: 0830001
Permit Number: 0830001-005-AC
Expiration Date: August 31, 2007
County: Marion
Latitude/Longitude:
29° 12' 32"N/82° 10' 27"W
Project: Drum Mix Asphalt Plant

This permit is issued under the provisions of Chapter(s) 403, Florida Statutes, and Florida Administrative Code Rule(s) 62-210. The above named permittee is hereby authorized to perform the work or operate the facility shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the department and made a part hereof and specifically described as follows:

The permit is being issued to construct a Drum Mix Asphalt Plant to replace the existing drum mix asphalt plant at the site. The drum mix asphalt plant is a Gencor Model 400 Skidded Ultraplant rated at 400 tons per hour. Particulate emissions are controlled by a primary collector followed by a Gencor Ultraflo Skidded Model CFS-151 Baghouse with an air to cloth ratio of 4.92 to 1 and a particulate matter (PM) collection efficiency of approximately 99.9 percent. The plant also includes a hot oil heater and two 200 ton asphalt storage silos.

This facility is classified as a **synthetic minor** facility and is located at 3021 NW 21st Street, Ocala, Marion County, Florida.

GENERAL CONDITIONS:

1. The terms, conditions, requirements, limitations and restrictions set forth in this permit, are "permit conditions" and are binding and enforceable pursuant to Sections 403.141, 403.727, or 403.859 through 403.861, Florida Statutes (F.S.) The permittee is placed on notice that the Department will review this permit periodically and may initiate enforcement action for any violation of these conditions.

2. This permit is valid only for the specific processes and operations applied for and indicated in the approved drawings or exhibits. Any unauthorized deviation from the approved drawings, exhibits, specifications, or conditions of this permit may constitute grounds for revocation and enforcement action by the Department.

3. As provided in subsections 403.087(6) and 403.722(5), F.S., the issuance of this permit does not convey any vested rights or any exclusive privileges. Neither does it authorize any injury to public or private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations. This permit is not a waiver of or approval of any other Department permit that may be required for other aspects of the total project which are not addressed in this permit.

4. This permit conveys no title to land or water, does not constitute State recognition or acknowledgment of title, and does not constitute authority for the use of submerged lands unless herein provided and the necessary title or leasehold interests have been obtained from the State. Only the Trustees of the Internal Improvement Trust Fund may express State opinion as to title.

5. This permit does not relieve the permittee from liability for harm or injury to human health or welfare, animal, or plant life, or property caused by the construction or operation of this permitted source, or from penalties therefore; nor does it allow the permittee to cause pollution in contravention of Florida Statutes and Department rules, unless specifically authorized by an order from the Department.

6. The permittee shall properly operate and maintain the facility and systems of treatment and control (and related appurtenances) that are installed and used by the permittee to achieve compliance with the conditions of this permit, as required by Department rules. This provision includes the operation of backup and auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by Department rules.

7. The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to:

   (a) Have access to and copy any records that must be kept under conditions of this permit;
   (b) Inspect the facility, equipment, practices, or operations regulated or required under this permit; and
   (c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules.

   Reasonable time may depend on the nature of the concern being investigated.

8. If, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in this permit, the permittee shall immediately provide the Department with the following information:

   (a) A description of and cause of noncompliance; and
   (b) The period of noncompliance, including dates and times; or, if not corrected, the anticipated time the noncompliance is expected to continue, and steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

   The permittee shall be responsible for any and all damages which may result and may be subject to enforcement action by the Department for penalties or for revocation of this permit.

GENERAL CONDITIONS:

9. In accepting this permit, the permittee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this permitted source which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the permitted source arising under the Florida Statutes or Department rules, except where such use is prescribed by Section 403.111 and 403.73, F.S. Such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

10. The permittee agrees to comply with changes in Department rules and Florida Statutes after a reasonable time for compliance; provided, however, the permittee does not waive any other rights granted by Florida Statutes or Department rules.

11. This permit is transferable only upon Department approval in accordance with Rule 62-4.120 and Rule 62-30.300, Florida Administrative Code (F.A.C.), as applicable. The permittee shall be liable for any non-compliance of the permitted activity until the transfer is approved by the Department.

12. This permit or a copy thereof shall be kept at the work site of the permitted activity.

13. This permit also constitutes:

    ( ) Determination of Best Available Control Technology (BACT)
    ( ) Determination of Prevention of Significant Deterioration (PSD)
    ( ) Certification of compliance with State Water Quality Standards (Section 401, PL 92-500)
    (X) Compliance with New Source Performance Standards

14. The permittee shall comply with the following:

    (a) Upon request, the permittee shall furnish all records and plans required under Department rules. During enforcement actions, the retention period for all records will be extended automatically unless otherwise stipulated by the Department.

    (b) The permittee shall hold at the facility or other location designated by this permit records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring information) required by the permit, copies of all reports required by this permit, and records of all data used to complete the application for this permit. These materials shall be retained at least three years from the date of the sample, measurement, report, or application unless otherwise specified by Department rule.

    (c) Records of monitoring information shall include:
        1. the date, exact place, and time of sampling or measurements;
        2. the person responsible for performing the sampling or measurements;
        3. the dates analyses were performed;
        4. the person responsible for performing the analyses;
        5. the analytical techniques or methods used;
        6. the results of such analyses.

15. When requested by the Department, the permittee shall within a reasonable time furnish any information required by law which is needed to determine compliance with the permit. If the permittee becomes aware the relevant facts were not submitted or were incorrect in the permit application or in any report to the Department, such facts or information shall be corrected promptly.

SPECIFIC CONDITIONS:

1. The facility is subject to the following provisions of 40 CFR 60, Subchapter C - Air Programs, Subpart A - General Provisions, the complete text of which is provided in Appendix A:

   a) 40 CFR 60.8 - Performance tests;
   b) 40 CFR 60.9 - Availability of information;
   c) 40 CFR 60.10 - State authority;
   d) 40 CFR 60.11 - Compliance with standards and maintenance requirements;
   e) 40 CFR 60.12 - Circumvention; and
   f) 40 CFR 60.14 - Modification;

2. The facility is subject to the provisions of 40 CFR 60, Subchapter C-Air Programs, Subpart I - Standards of Performance for Hot Mix Asphalt Facilities, the complete text of which is provided in Appendix A.

   a) 40 CFR 60.92 - Standard for particulate matter: and
   b) 40 CFR 60.93 - Test methods and procedures.

Operating Conditions

3. The emission unit maximum operating limits are as follows:

   a) The process rate shall not exceed 0.500 million tons of a virgin or recycle mix asphalt product per any consecutive twelve month period.

   b) Total fuel oil consumption shall not exceed 1.2 million gallons in any consecutive twelve month period of new (virgin) no. 2 fuel oil or on-specification used oil only.

   c) The maximum sulfur content of all fuel oils fired shall not exceed 1.0 percent by weight.

   d) The facility is permitted to fire natural gas, propane, new (virgin) no. 2 fuel oil, or on-specification used oil.

   [Rule 62-210.200, F.A.C. - Definitions - (PTE), 62-210.300(3)(c)1., F.A.C.]

4. The following used oil specifications are applicable. Used oil within the allowable levels is "on-specification" and used oil exceeding any allowable level is "off-specification."

Constituent/Property	Allowable Levels	Test Methods
Arsenic	5 ppm maximum	Test Methods Used in EPA SW-846
Cadmium	2 ppm maximum	Test Methods Used in EPA SW-846
Chromium	10 ppm maximum	Test Methods Used in EPA SW-846
Lead	100 ppm maximum	Test Methods Used in EPA SW-846
Flash Point	100° F minimum	Test Methods Used in EPA SW-846
Total Halogens	4,000 ppm maximum*	Test Methods Used in EPA SW-846
PCB	< 50 ppm	Test Methods Used in EPA SW-846

SPECIFIC CONDITIONS:

* Used oil containing between 1,000 and 4,000 ppm of total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste and cannot be utilized unless the applicant first rebuts this presumption by demonstrating that Used Oil does not contain hazardous waste and receives written approval from the Department.
[Rule 62-710.210(3), F.A.C.; 40 CFR Part 279.11]

5. When used oil is fired the facility must operate in compliance with all applicable regulations and Department policy including the requirements of Rule 62-710, F.A.C. and 40 CFR Part 279, Subparts D and E and any new regulations subsequently adopted, and the following conditions shall apply:

   a) Each time used oil is transferred to the facility storage tank a sample of used oil to be burned shall be analyzed for arsenic, chromium, cadmium, total halogens, PCB, flash point, and lead using EPA/DEP or ASTM approved methods prior to being fired. Alternately, the used oil vendors' analysis for the referenced parameters may be utilized to satisfy this condition. Results of the used oil sampling and analysis shall be retained on site for a three-year period.
   b) The total quantity of used oil burned during each calendar year, on a monthly basis, shall be included in the Annual Operations Report for Air Emissions Sources.
   c) The firing of used oil which contains PCB at concentrations greater than 2 ppm and less than 50 ppm is regulated by 40 CFR 761. The source can not fire used oil which contains PCB concentrations in this range during startup or shutdown in accordance with 40 CFR 761.20(e)(3), and the source must submit to this office a copy of the written notice described in 40 CFR 761.20(e)(3)].

   [Rule 62-4.070, F.A.C.]

6. No person shall cause, let, permit, suffer or allow the emissions of unconfined particulate matter from any source whatsoever, including, but not limited to, vehicular movement, transportation of materials, construction alteration, demolition or wrecking, or industrially related activities such as loading, unloading, storing or handling, without taking reasonable precautions to prevent such emission. The area must be watered down should unconfined emissions occur.
   [Rule 62-296.320(4)(c)1., F.A.C.]

7. No person shall circumvent any pollution control device or allow the emissions of air pollutants without the applicable air pollution control device operating properly.
   [Rule 62-210.650, F.A.C.]

8. No person shall cause, suffer, allow or permit the discharge of air pollutants which cause or contribute to an objectionable odor. An objectionable odor is defined as any odor present in the outdoor atmosphere which by itself or in combination with other odors, is or may be harmful or injurious to human health or welfare, which unreasonably interferes with the comfortable use and enjoyment of life or property, or which creates a nuisance.
   [Rule 62-296.320(2) F.A.C. and Rule 62-210.200(181), F.A.C.]

SPECIFIC CONDITIONS:

Emission Limits

9. See **Appendix A** for applicable opacity and particulate emission limits for the **drum mix asphalt plant**.

Compliance Testing

10. The asphalt plant must be tested for particulate emissions and concurrently for visible emissions within 180 days after being placed in operation.
[Rule 40 CFR 60.8, Rule 62-210.300(3)(c)1.i., F.A.C., and Rule 62-4.070(3), F.A.C.]

11. EPA Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf).
[Rule 62-297.401, F.A.C.; 40 CFR 60.93 (b)(1)]

12. DEP Method 9 and the procedures in 40 CFR 60.11 shall be used to determine opacity. DEP Method 9 shall be conducted for thirty minutes.
[Rule 62-297.401 F.A.C.; 40 CFR 60.93(b)(2)]

13. At least 15 days prior to the date on which each formal compliance test is due to begin, the permittee shall provide written notification of the test to the air compliance section of this office. The notification must include the following information: the date, time and location of each test; the name and telephone number of the facility's contact person who will be responsible for coordinating the test; and the name, company, and telephone number of the person conducting the test.
[Rule 62-297.310(7)(a)9., F.A.C.]

14. The maximum permitted operating rate is 400 tons per hour for the asphalt plant. Testing of emissions shall be conducted with the emissions unit operation at permitted capacity. Permitted capacity is defined as 90 to 100 percent of the maximum operation rate allowed by the permit. If it is impractical to test at permitted capacity, an emissions unit may be tested at less than the minimum permitted capacity; in this case, subsequent emissions unit operation is limited to 110 percent of the test load until a new test is conducted. Once the unit is so limited, operation at higher capacities is allowed for no more than 15 consecutive days for the purpose of additional compliance testing to regain the authority to operate at the permitted capacity.
[Rule 62-297.310(2), F.A.C.]

15. The stack sampling facility must comply with Rule 62-297.310(6), F.A.C., regarding minimum requirements that include but are not limited to: location of sampling ports, work platform area hand rails and toe rails, caged ladder, access and electrical power.

16. A differential pressure gauge is required to measure the pressure drop across the baghouse, a minimum of 10 days before the stack test is performed.
[Rule 62-297.310(5)(b), F.A.C.]

SPECIFIC CONDITIONS:

Recordkeeping and Document Submittal

17. The permittee shall maintain records to demonstrate that the sulfur content, by weight, of each shipment of new and on-spec used oil is 1.0 percent or less and that the sulfur content was determined in accordance with the methods listed in specific condition 18.
[Rule 62-210.300(3)(c)1.c., F.A.C.]

18. The fuel sulfur content, percent by weight, for liquid fuels shall be evaluated using ASTM methods ASTM D4057-88 and one of ASTM D2622-94, ASTM D4294-98, ASTM D1552-95 or ASTM D129-91 adopted and incorporated by reference in Rule 62-297.440(1), F.A.C. Alternately, after written notification to and approval by the Department, the permittee may use other DEP Air Program approved methods, i.e. alternate sampling procedures, for sulfur in petroleum products.
[Rules 62-210.300(3)(c)1.c., F.A.C.]

19. In order to demonstrate compliance with operating condition number 3, the permittee shall maintain a log at the facility for a period of at least 5 years from the date the data is recorded. The log at a minimum shall contain the following:

Monthly

a) designation of the month and year of operation for which the records are being tabulated
b) consecutive 12 month total of asphalt concrete product (tons), the amount of fuel consumed, and the sulfur content of the fuel oil fired.

[Rule 62-4.070(3), F.A.C.]

Note: A consecutive 12 month total is equal to the total for the month in question plus the totals for the eleven months previous to the month in question. A consecutive 12-month total treats each month of the year as the end of a 12-month period. A 12-month total is not a year-to-date total. Facilities that have not been operating for 12 months should retain 12 month totals using whatever number of months of data are available until such a time as a consecutive 12 month total can be maintained each month.

20. The owner or operator shall submit a copy of the compliance test results to the air compliance section of this office within 45 days after the last sampling run of each test is completed.
[Rule 62-297.310(8)(b), F.A.C]

21. The owner or operator shall complete DEP Form No. 62-210.900(5), F.A.C. "Annual Operating Report for Air Pollutant Emitting Facility", including the Emissions Report, for each calendar year and submit to the air compliance section of this office on or before March 1 of the following year.
[Rule 62-210.370(3), F.A.C.]

SPECIFIC CONDITIONS:

Permit Application

22. The construction shall reasonably conform to the plans and schedule submitted in the application. If the permittee is unable to complete construction on schedule, he must notify the department in writing at least 90 days prior to the expiration of the construction permit and submit an application for an extension of the construction permit.

An operating permit is required for operation of this source. To obtain a permit, the permittee must demonstrate compliance with the conditions of the construction permit and submit the application fee, along with the compliance test results and Application for Air Permit to the Department's Central District Office [Rule 62-4.220, F.A.C.]. The application shall be submitted no later than 180 days after receipt of this permit.
[Rule 62-4.220, F.A.C.]

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

L.T. Kozlov, P.E.
Program Administrator
Air Resources Management

Issued: 9-8-06

APPENDIX A

40 CFR 60.8 Performance tests.

1. Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance tests(s) and furnish the Administrator a written report of the results of such performance tests(s).
[40 CFR 60.8(a)]

2. Performance tests shall be conducted and data reduced in accordance with the test methods and procedures contained in each applicable subpart unless the Administrator (1) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology, (2) approves the use of an equivalent method, (3) approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance, (4) waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the affected facility is in compliance with the standard, or (5) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.
[40 CFR 60.8(b)]

3. Performance tests shall be conducted under such conditions as the Administrator shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.
[40 CFR 60.8(c)]

4. The owner or operator of an affected facility shall provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present.
[40 CFR 60.8(d)]

5. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

   (a) Sampling ports adequate for test methods applicable to such facility. This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

   (b) Safe sampling platform(s);

   (c) Safe access to sampling platform(s); and

   (d) Utilities for sampling and testing equipment.
[40 CFR 60.8(e)]

6. Unless otherwise specified in the applicable subpart, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.
[40 CFR 60.8(f)]

40 CFR 60.9 Availability of information.

1. The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter. (Information submitted voluntarily to the Administrator for the purposes of 40 CFR 60.5 and 40 CFR 60.6 is governed by 2.201 through 2.213 of this chapter and not by 2.301 of this chapter.)
[40 CFR 60.9]

40 CFR 60.10 State authority.

1. The provisions of 40 CFR 60 shall not be construed in any manner to preclude any State or political subdivision thereof from:

   (a) Adopting and enforcing any emission standard or limitation applicable to an affected facility, provided that such emission standard or limitation is not less stringent than the standard applicable to such facility.

   (b) Requiring the owner or operator of an affected facility to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of such facility.

   [40 CFR 60.10]

40 CFR 60.11 Compliance with standards and maintenance requirements.

1. Compliance with standards in this part, other than opacity standards, shall be determined only by performance tests established by 40 CFR 60.8, unless otherwise specified in the applicable standard.
   [40 CFR 60.11(a)]

2. Compliance with opacity standards in this part shall be determined by conducting observations in accordance with Reference Method 9 in appendix A of this part, any alternative method that is approved by the Administrator, or as provided in 40 CFR 60.11(e)(5). For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard.)
   [40 CFR 60.11(b)]

3. The opacity standards set forth in this part shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard.
   [40 CFR 60.11(c)]

4. At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.
   [40 CFR 60.11(d)]

5. (a) For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test required in 40 CFR 60.8 unless one of the following conditions apply. If no performance test under 40 CFR 60.8 is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test required under 40 CFR 60.8, the source owner or operator shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. In these cases, the 30-day prior notification to the Administrator required in 40 CFR 60.7(a)(6) shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under 40 CFR 60.8. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9 of appendix A of this part. Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner or operator of an affected facility shall make available, upon request by the Administrator, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. Except as provided in 40 CFR 60.11(e)(5), the results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in appendix B of 40 CFR 60, has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

   (b) Except as provided in 40 CFR 60.11(e)(3), the owner or operator of an affected facility to which an opacity standard in this part applies shall conduct opacity observations in accordance with 40 CFR 60.11(b), shall

record the opacity of emissions, and shall report to the Administrator the opacity results along with the results of the initial performance test required under 40 CFR 60.8. The inability of an owner or operator to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

(c) The owner or operator of an affected facility to which an opacity standard in this part applies may request the Administrator to determine and to record the opacity of emissions from the affected facility during the initial performance test and at such times as may be required. The owner or operator of the affected facility shall report the opacity results. Any request to the Administrator to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 40 CFR 60.7(a)(6). If, for some reason, the Administrator cannot determine and record the opacity of emissions from the affected facility during the performance test, then the provisions of 40 CFR 60.7(e)(1) shall apply.

(d) The owner or operator of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test required by 40 CFR 60.8 and shall furnish the Administrator a written report of the monitoring results along with Method 9 and 40 CFR 60.8 performance test results.

(e) The owner or operator of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under 40 CFR 60.8 in lieu of Method 9 observation data. If an owner or operator elects to submit COMS data for compliance with the opacity standard, he shall notify the Administrator of that decision, in writing, at least 30 days before any performance test required under 40 CFR 60.8 is conducted. Once the owner or operator of an affected facility has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent tests required under 40 CFR 60.8 until the owner or operator notifies the Administrator, in writing, to the contrary. For the purpose of determining compliance with the opacity standard during a performance test required under 40 CFR 60.8 using COMS data, the minimum total time of COMS data collection shall be averages of all 6-minute continuous periods within the duration of the mass emission performance test. Results of the COMS opacity determinations shall be submitted along with the results of the performance test required under 40 CFR 60.8. The owner or operator of an affected facility using a COMS for compliance purposes is responsible for demonstrating that the COMS meets the requirements specified in 40 CFR 60.13(c), that the COMS has been properly maintained and operated, and that the resulting data have not been altered in any way. If COMS data results are submitted for compliance with the opacity standard for a period of time during which Method 9 data indicates noncompliance, the Method 9 data will be used to determine opacity compliance.

(f) Upon receipt from an owner or operator of the written reports of the results of the performance tests required by 40 CFR 60.8, the opacity observation results and observer certification required by 40 CFR 60.11(e)(1), and the COMS results, if applicable, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If COMS data results are used to comply with an opacity standard, only those results are required to be submitted along with the performance test results required by 40 CFR 60.8. If the Administrator finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with 40 CFR 60.8 of this part but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the shall notify the owner or operator and advise him that he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility.

(g) The Administrator will grant such a petition upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment was operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by the Administrator; and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

(h) The Administrator will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity standard in the Federal Register.

[40 CFR 60.11(e)]

6. Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. [40 CFR 60.11(f)]

40 CFR 60.12 Circumvention.

1. No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.
[40 CFR 60.12]

40 CFR 60.14 Modification.

1. Except as provided under 40 CFR 60.14(e) and 40 CFR 60.14(f), any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.
[40 CFR 60.14(a)]

2. Emission rate shall be expressed as kg/hr (lbs./hour) of any pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine emission rate:

   (a) Emission factors as specified in the latest issue of "Compilation of Air Pollutant Emission Factors", EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where utilization of emission factors demonstrate that the emission level resulting from the physical or operational change will either clearly increase or clearly not increase;

   (b) Material balances, continuous monitor data, or manual emission tests in cases where utilization of emission factors as referenced in 40 CFR 60.14(b)(1) does not demonstrate to the Administrator's satisfaction whether the emission level resulting from the physical or operational change will either clearly increase or clearly not increase, or where an owner or operator demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator utilizing emission factors as referenced in 40 CFR 60.14(b)(1). When the emission rate is based on results from manual emission tests or continuous monitoring systems, the procedures specified in 40 CFR 60 appendix C of 40 CFR 60 shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator based on representative performance of the facility. At least three valid test runs must be conducted before and at least three after the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum feasible degree for all test runs.

   [40 CFR 60.14(b)]

   (c) The addition of an affected facility to a stationary source as an expansion to that source or as a replacement for an existing facility shall not by itself bring within the applicability of this part any other facility within that source.

   [40 CFR 60.14(c)]

   (d) [Reserved]

4. The following shall not, by themselves, be considered modifications under this part:

   (a) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category, subject to the provisions of 40 CFR 60.14(c) and 40 CFR 60.15;

   (b) An increase in production rate of an existing facility, if that increase can be accomplished without a capital expenditure on that facility;

   (c) An increase in the hours of operation;

   (d) Use of an alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to that source type, as provided by 40 CFR 60.1, the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Act, shall not be considered a modification.

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial.

(f) The relocation or change in ownership of an existing facility.
[40 CFR 60.14(e)]

5. Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section.
[40 CFR 60.14(f)]

6. Within 180 days of the completion of any physical or operational change subject to the control measures specified in 40 CFR 60.14(a), compliance with all applicable standards must be achieved.
[40 CFR 60.14(g)]

40 CFR 60.92 Standard for particulate matter.

1. On and after the date on which the performance test required to be conducted by 40 CFR 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which:

(a) Contain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf); and
[40 CFR 60.92(a)(1)].

(b) Exhibit 20 percent opacity or greater.
[40 CFR 60.92(a)(2)]

40 CFR 60.93 Test methods and procedures.

1. In conducting the performance tests required in 40 CFR 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in 40 CFR 60.8(b).
[40 CFR 60.92(a)]

2. The owner or operator shall determine compliance with the particulate matter standards in 40 CFR 60.92 as follows:

(a) Method 5 shall be used to determine the particulate matter concentration. The sampling time and sample volume for each run shall be at least 60 minutes and 0.90 dscm (31.8 dscf); and
[40 CFR 60.92(b)(1)]

(b) Method 9 and the procedures in 40 CFR 60.11 shall be used to determine opacity.
[40 CFR 60.92(a)(2)]