UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
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DENVER, CO 80202-2466
http://www.epa.gov/region08

September 13, 2000

Ref: 8P-AR

Ms. Margie Perkins, Director
Air Pollution Control Division
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

Re: EPA Review of Proposed Title V Operating Permit for TriGen-Colorado Energy Corporation

Dear Ms. Perkins:

By this letter, the U.S. Environmental Protection Agency (EPA) objects to the proposed Title V operating permit (permit number #96OPJE143) for TriGen-Colorado Energy Corporation (TriGen), proposed to be issued by the Air Pollution Control Division (Division) of the Colorado Department of Public Health and Environment. Our office received the proposed permit for review on July 31, 2000. The 45-day period for EPA review expires on September 13, 2000. This formal objection, based on our review of the proposed permit and supporting information, is issued under the authority of Title V of the Clean Air Act (Act), specifically section 505(b) of the Act, 42 U.S.C. § 7661d(b), and 40 CFR §70.8(c).

Pursuant to 40 CFR §70.8(c)(1), EPA will object to the issuance of any proposed Title V operating permit that EPA determines does not comply with applicable requirements of the Act or the operating permit program requirements of 40 CFR part 70. In accordance with 40 CFR §70.8(c)(1) and (4) and Colorado Air Quality Control Commission (AQCC) Regulation No. 3, section C.V.B.5, when EPA objects in writing to the issuance of a permit within 45 days of receipt of the proposed permit and all necessary supporting information, the Division may not issue the permit. If the Division fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA will issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act, 40 CFR part 71.

Pursuant to 40 CFR §70.8(c)(2), any EPA objection to a proposed permit shall include a statement of EPA's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. EPA's objection issues are detailed in the enclosure to this letter.

In addition to the objection issues, we have several additional concerns with the permit that are listed in the second part of the enclosure to this letter. While these items are not within the scope of our formal objection, we believe that these are important issues that we would like you to seriously consider.

If you have any questions, please feel free to contact Richard Long at (303) 312-6005 or Callie Videtich at (303) 312-6434, or your staff may contact Meredith Bond at (303) 312-6438 for technical matters, or Teresa Lukas of Regional Counsel at (303) 312-6898, for legal matters.

Sincerely,

/Signed by Throne Chambers for Clough/

Kerrigan G. Clough
Assistant Regional Administrator
Office of Partnerships and Regulatory Assistance

cc: Jim King, CO AQPD (w/ enc.)
Jeffry K. Richie, TriGen (w/ enc.)

ENCLOSURE
EPA Objection Issues and Comments Regarding the Proposed Title V Operating Permit
for TriGen-Colorado Energy Corporation
(State of Colorado Permit Number #96OPJE143)

I. **OBJECTION ISSUES**

1. Single Source Issue

a. Permit, Section I, Conditions 3.1 and 3.2, page 4, treats TriGen and Coors as separate entities under Colorado's permitting regulations. This does not accord with EPA's interpretation of the "major source" definition (40 CFR §70.2), which, as applied to TriGen and Coors, would result in the TriGen power plant, including its boilers and associated equipment, and the Coors Brewery being treated as a single source. Coors originally built and owned the power plant, which is located in the middle of the brewery site in Golden, Colorado. In this case, Coors has divested itself of ownership, but not of control.

The fact that the two facilities are collocated creates a presumption of "control" relationship. We refer you to the letter from William Spratlin, EPA Region 7, to State and local air directors, dated September 18, 1995 (enclosed). We believe several criteria discussed in that letter apply to the Coors-TriGen relationship. First, the power plant is a support facility for the brewery, supplying all of the electrical power it currently generates, as well as steam, to the brewery. We have reviewed the purchase and supply contract binding the two facilities and conclude that the document provides persuasive evidence of common control through a contractual relationship. Further evidence of this control relationship is the fact that Coors uses the boilers at TriGen for disposal of volatile organic compound (VOC) emissions from the brewery. That the two facilities have different Standard Industrial Classification (SIC) codes is not relevant, since the power plant, as a support facility, is subsumed in the SIC classification for the primary facility, the brewery. For further discussion of our interpretation of the definition of "stationary source," we refer you to the letter from Richard Long to Julie Wrend of the Division, dated November 12, 1998 (enclosed).

The single source made up of the two facilities is considered a major stationary source under Colorado AQCC Regulation No. 3 with regard to VOC emissions as well as for the other criteria pollutants identified in the permit: nitrogen oxides, sulfur dioxide, carbon monoxide, and particulate matter (PM10).

Solution: The permit must state that TriGen is considered to be part of a single source in conjunction with the Coors Brewery, for purposes of determining

applicability of non-attainment area new source review (NSR) and prevention of significant deterioration (PSD) requirements and Title V operating permit requirements. Future modifications of the two facilities that make up the single source must be addressed together to calculate net emissions increases for comparison with NSR and PSD significance levels. The description of "major source" in Section I, Condition 3.1 and 3.2 must be changed to include VOCs, and the non-attainment area designation in Section I, Condition 3.1 and 3.2 must include ozone. (Also, see section III of this enclosure, "General Comments," paragraph 1, "Ozone Non-attainment Area Description.")

b. Permit, Section III, 1. Specific Conditions, Separate Source Determination entry in Permit Shield table. As stated above, the proposed Title V Permit treats TriGen and Coors as separate entities, which is contrary to EPA's interpretation that the TriGen boilers and associated equipment, and Coors brewery constitute a single source.

Solution: This section must state that TriGen is a single source operating in conjunction with the Coors Brewery.

2. Periodic Monitoring - Opacity Requirements

a. Section 114(a)(3) of the Clean Air Act requires "enhanced monitoring" at all major stationary sources. Section 504(c) requires each Title V operating permit to "set forth . . . monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." Section 504(a) requires permits to include "such other conditions as are necessary to assure compliance with applicable requirements" of the Act. These statutory requirements are implemented by corresponding EPA regulations. In particular, 40 CFR §70.6(a)(3)(i)(B) provides that where the applicable requirement does not require periodic testing or monitoring, the permit shall contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit...." In addition, § 70.6(c)(1) requires that "[a]ll part 70 permits shall contain the following elements with respect to compliance: (1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, [and] monitoring ... requirements sufficient to assure compliance with the terms and conditions of the permit." In accordance with applicable judicial precedent interpreting the periodic monitoring rule at §70.6(a)(3), where the applicable requirement does not require any periodic testing or monitoring, section 70.6(c)(1)'s requirement that monitoring be sufficient to assure compliance will be satisfied by establishing in the permit "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." See 40 CFR §§ 70.6(a)(3)(i)(B). Where the applicable requirement already requires periodic

testing or instrumental or non-instrumental monitoring, however, the court of appeals has ruled that the periodic monitoring rule in § 70.6(a)(3) does not apply even if that monitoring is not sufficient to assure compliance. In such cases, the separate regulatory standard at § 70.6(c)(1) applies instead. By its terms, § 70.6(c)(1) – like the statutory provisions it implements – calls for sufficiency reviews of periodic testing and monitoring in applicable requirements, and enhancement of that testing or monitoring through the permit as necessary to be sufficient to assure compliance with the terms and conditions of the permit. Here, the underlying applicable opacity requirement in AQCC Regulation No. 1 for boilers B001 and B002, as well as for boiler B003, contains no periodic monitoring requirement whatsoever. Thus, the provisions of § 70.6(a)(3)(i)(B) apply.

Section II of the proposed permit, Condition 1.5 requires the source to conduct a Method 9 visual emission observation of boilers B001 and B002 to measure the units' compliance with the 20 percent opacity limit of AQCC Regulation No. 1, "whenever any visible emissions, other than steam persist for more than four (4) consecutive hours." This condition, however, does not satisfy the requirement for periodic monitoring. There is no requirement in the permit that the source must periodically check to see if any visible emissions, other than steam, are occurring. Nor is there a requirement that, if visible emissions other than steam are observed, the source must undertake a four-hour watch to determine whether the emissions persist for that length of time, before conducting a Method 9 test. Finally, there is not adequate justification for allowing visible emissions to continue for four hours before collecting evidence of compliance or non-compliance. For these reasons, we believe the opacity monitoring provision in Condition 1.5 is insufficient to meet the periodic monitoring requirement of section 504 of the Act and 40 CFR § 70.6(a)(3).

Solution: In a telephone conversation on September 6, 2000, EPA Region 8 and the Division reached an agreement in principle for resolving the issue. The permit will include provisions requiring the source to conduct qualitative observations of visible emissions at least two times per day, once in the morning and once in the afternoon during daylight hours on boilers B001 and B002 when they are burning fuel oil. If the qualitative survey indicates visible emissions other than steam persisting for more than six (6) minutes, the source must conduct a Method 9 test within a reasonable period of time, not to exceed one-half hour. The source must keep records of the date, time and results of the qualitative observations. When boilers B001 and B002 are burning natural gas, records documenting all times when natural gas is being burned will satisfy the periodic monitoring requirement.

b. Permit, Section II, Condition 1.5 (for boilers B001 and B002) is problematic because it allows additional Method 9 observations to be delayed for up to 90 minutes after the first observation above the standard. For the exceptions to the

20% limit listed in condition 1.5, this schedule is not adequate to determine compliance with Regulation No. 1, which allows one value above 30% per 60- minute period. In addition, allowing up to a 90-minute break in observations once an exceedance is recorded is not likely to yield data that are representative of the source's compliance with the opacity limits. For these reasons, we believe condition 1.5 is insufficient to meet the periodic monitoring requirement of section 504 of the Act and 40 CFR §70.6(a)(3)(i)(B).

Solution: The permit must require that once an opacity exceedance is observed, additional Method 9 observations shall occur without break until two consecutive observations are in compliance. EPA discussed this issue with the Division staff on September 6, 2000, but did not reach specific agreement regarding this solution.

c. Permit Section II, Condition 2.5 for boiler B003 requires a biweekly Method 9 test for determining compliance with the 20 percent opacity limit on this coal-fired boiler. We believe this is insufficient to meet the periodic monitoring requirement of section 504 of the Act and 40 CFR § 70.6(a)(3)(i)(B), given the sensitivity of this emission point to small changes in baghouse control efficiency and coal heat value (see section I.3, below).

Solution: The permit must contain the same requirement for twice-daily visual checks with follow-up Method 9 observations, described in section I.2.a, above, for boiler B003 whenever it is operating. See further discussion in subsections d and e, below. The permittee may, as an alternative, use a continuous opacity monitoring system (COMS) that is appropriately installed, certified, operated, and maintained to measure opacity of emissions from boiler B003.

d. Permit, Section II, Conditions 2.6.1 and 2.6.2 for boiler B003 suffer from the same general problem we describe for condition 1.5 in section I.2.a, above. There is no requirement in the permit that the source actually check visible emissions. In addition, conditions 2.6.1 and 2.6.2 only require that a Method 9 observation occur the same calendar day that visible emissions are observed, but this is not adequate to monitor opacity that corresponds to observed visible emissions. Also, these conditions contain monitoring requirements for the special conditions defined in Regulation No. 1, but do not contain monitoring requirements for shutdown events, which ought to be monitored in a fashion similar to startups and other special conditions. For these reasons, we believe conditions 2.6.1 and 2.6.2 are insufficient to meet the periodic monitoring requirement of section 504 of the Act and 40 CFR §70.6(a)(3)(i)(B).

Solution: The permit must include provisions requiring the source to conduct qualitative observations of visible emissions at least two times per day (once in the

morning, once in the afternoon) during daylight hours on boiler B003 during any shutdown, startup, fire building, cleaning of fire boxes, soot blowing, process modification, and adjustment of control equipment, except as provided in condition 2.6.2. If the qualitative survey indicates visible emissions other than steam persisting for more than six (6) minutes, the source must conduct a Method 9 test within a reasonable period of time, not to exceed one-half hour. The source must keep records of the date, time and results of the qualitative observations. The permittee may, as an alternative, use a continuous opacity monitoring system (COMS) that is appropriately installed, certified, operated, and maintained to measure opacity of emissions from boiler B003. We believe this approach is consistent with the agreement in principle for resolving this issue that we reached with Division staff in the September 6, 2000 conference call.

e. Permit, Section II, Condition 2.6.3 for boiler B003 is problematic because it allows additional observations to be delayed for up to 90 minutes after the first observation above the standard. For the special conditions listed in condition 2.6, this schedule is not adequate to determine compliance with Regulation No. 1, which allows one value above 30% per 60-minute period. In addition, allowing up to a 90-minute break in observations once an exceedance is recorded is not likely to yield data that are representative of the source's compliance with the opacity limits. For these reasons, we believe condition 2.6.3 is insufficient to meet the periodic monitoring requirement of section 504 of the Act and 40 CFR §70.6(a)(3)(i)(B).

Solution: The permit must require that once an opacity exceedance is observed, additional Method 9 observations shall occur without break until two consecutive observations are in compliance. EPA discussed this issue with the Division staff on September 6, 2000, but did not reach specific agreement regarding this solution.

3. <u>Inadequate Compliance Demonstration and Periodic Monitoring - Particulate Emissions</u>

Permit Section II, Condition 2.2 for emission unit B003 (coal fired boiler) requires the boiler to meet the particulate matter emission limit resulting from the equation in Regulation No. 1, section III.A.1.b. The unit is equipped with a baghouse for emission control. Section II, Condition 2.2, ends with a statement that: "A one time demonstration of the compliance shall be kept on record and made available for Division review upon request." However, for reasons explained below, we believe that a one-time demonstration of compliance is not appropriate for this circumstance. In addition, a one-time test does not satisfy the periodic monitoring requirements of section 504 of the Act and 40 CFR § 70.6(a)(3)(1)(B).

The Technical Review Document (TRD) prepared for this permit action states that: "TriGen needs to be mindful that small combinations of changes in the baghouse control efficiency and the coal heat value may result in an exceedance of the standard. A reduction of the control efficiency to approximately 96% may result in an exceedance of the standard for a reasonable range of coal heat contents." The performance test requirement for the Regulation No. 1 particulate emission limitation says: "Prior to granting a final approval permit or amending a permit, when an emission source or control equipment is altered, or at any time when there is reason to believe that emission standards are being violated, the Division may require the owner or operator. . . to conduct [EPA Reference method] performance tests. . . to determine compliance. . .." (See AQCC Regulation No. 1, section III.A.3.) Given these statements, we question whether a one-time demonstration of compliance comports with the underlying Colorado regulation, and we cannot consider such a one-time demonstration adequate to assure ongoing compliance for this unit (see section 504 of the Act, and 40 CFR §70.6(c)(1)).

Solution: The Division has acknowledged that a one-time calculation to demonstrate compliance is not satisfactory for this unit, but has not yet proposed appropriate language to correct the deficiency. The permit must specify appropriate stack test methods and schedule to meet the requirements of Regulation No. 1, section III.A.3. The permit must also contain appropriate periodic monitoring requirements for this source. Annual stack testing for particulate emissions, together with requirements for appropriate baghouse operation and maintenance (including record keeping) and for periodic monthly fuel sampling analysis will resolve this issue.

4. <u>Use of Terms "Normal Operation" and "Normal Conditions" and Description of Special Conditions</u>

a. Permit, Section II, Subsection 2, Table on page 10, for the parameter "Opacity." The table on page 10 of the proposed permit (hereafter referred to as Table 2) contains the heading "Normal Operation" under the heading "Limitations." The term "Normal Operation" does not appear in the underlying regulation, AQCC Regulation No. 1, and could be read to exclude conditions like shutdown that are subject to Regulation No. 1's 20% opacity limitation. This would render the permit inconsistent with the applicable requirement. Thus, in our opinion, the proposed permit is inconsistent with the requirements of section 504(a) of the Act and 40 CFR §70.6(a)(1). This problem in Table 2 is compounded by language in subsection 2.6, which we discuss below. We note that the tables on pages 7 and 16 of the proposed permit do not use the heading "Normal Operation."

Solution: Delete the heading "Normal Operation." Substitute the heading "General." (In a September 6, 2000 conference call, EPA and the Division staff discussed possible solutions to the problems identified in this Section 4. The solutions described herein and below are generally consistent with approaches on

which EPA and the Division staff reached tentative agreement, although the details of the language may differ in some respects from what was discussed.)

b. Section II, Subsection 2.6: This subsection indicates that the "special conditions" referenced in Table 2 "include startup, fire building, cleaning of fire boxes, soot blowing, process modification, adjustment of control equipment and startup." It then states that "[s]hutdown, upsets and offline emissions are not included in the special activities subject to any opacity standard." This provision compounds the problem with Table 2's heading "Normal Operation," and is clearly inconsistent with the underlying applicable requirement. The language makes it appear that shutdown, upsets, and offline emissions are "special conditions," but that they aren't subject to any opacity limit. However, Regulation No. 1's only exception from the 20% opacity limit is for startup, fire building, cleaning of fire boxes, soot blowing, process modification, and adjustment of control equipment. Thus, in our opinion, the proposed permit is inconsistent with the requirements of section 504(a) of the Act and 40 CFR §70.6(a)(1). Accordingly, the language in subsection 2.6 must be changed.

   Solution: Change the language of subsection 2.6 to read as follows: "The special conditions consist of startup, fire building, cleaning of fire boxes, soot blowing, process modification, and adjustment of control equipment. Shutdown, upsets, and offline emissions are not special conditions and are subject to the 20% opacity limit."

c. Section II, Subsection 20.1: The heading for this subsection is "Opacity Requirements During Normal Conditions." The term "Normal Conditions" does not appear in the underlying regulation and could be read to exclude conditions like shutdown that are subject to Regulation No. 1's 20% opacity limitation. This would render the permit inconsistent with the applicable requirement. Thus, in our opinion, the proposed permit is inconsistent with the requirements of section 504(a) of the Act and 40 CFR §70.6(a)(1).

   Solution: Replace the heading with "Opacity Requirements - General."

d. Section II, Subsection 20.2: The end of the first paragraph in this subsection contains the following sentence: "This provision does not apply to periods of shutdown or malfunction." It is not clear what "This provision" refers to. Also, this language is inconsistent with the language used in subsection 2.6 and could lead to enforcement problems. Thus, in our opinion, the proposed permit is inconsistent with the requirements of section 504(a) of the Act and 40 CFR §70.6(a)(1).

Solution: Change the sentence to read as follows to make it consistent with our suggested changes for subsection 2.6: "Shutdown, upsets, and offline emissions are not special conditions and are subject to the 20% opacity limit."

5. Permit Shield

Permit, Section III, Condition 1, contains a listing of, "parameters and requirements [that] have been specifically identified as non-applicable to the facility. . .." This condition identifies the following requirements as not applicable to the facility: a) 40 CFR § 52.21, Prevention of Significant Deterioration (PSD) as not applicable to the entire plant; b) Regulation No. 3, Part B concerning construction permits, including PSD and nonattainment NSR regulations, as not applicable to boilers 1, 2, and 3; c) 40 CFR Part 60, subparts A, D, Da, and Db as not applicable to boilers 1, 2, and 3; d) 40 CFR Part 60, subparts Da and Db as not applicable to boiler 4; and e) 40 CFR Part 60, subpart Db as not applicable to boiler 5. The Division's justification for granting the permit shield is that no construction or major modifications have occurred that would have triggered PSD (or NSR) applicability, and no modifications have occurred at any boiler since the specified new source performance standard (NSPS) applicability dates.

This blanket statement cannot be made unless the Division has been provided all of the potentially relevant facts regarding new source review and NSPS applicability in TriGen's operating permit application. While the Division may have reviewed its files for TriGen to make these determinations, the source may not have notified the Division of all changes that could have triggered PSD or NSR, or that could be considered a modification subject to the NSPS. Thus, even an exhaustive review of the Division's files is not sufficient to determine whether a facility may have undergone a modification that should have triggered major modification permitting requirements or the NSPS.

Furthermore, considering EPA's interpretation that TriGen and the Coors Brewery are a single source for the purposes of permitting requirements, the Division would have to have been provided all of the relevant facts regarding any changes at the Coors Brewery as well as TriGen to determine whether PSD would have applied to any net emissions increases at the combined source. Last, this shield for TriGen is not consistent with the permit shield provisions in 40 CFR §70.6(f)(3)(ii) or with condition 2.2 of this section, which state that the permit shield shall not alter or affect the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

Solution: To address this objection, the Division must delete the permit shield provisions for the entire plant and for boilers 1, 2, and 3 regarding applicability of construction permitting requirements (including PSD) in 40 CFR §52.21,

40 CFR §51.166, and Colorado Regulation No. 3 Part B. The Division must also delete the permit shield provisions for boilers 1, 2, 3, 4, and 5 regarding NSPS applicability, specifically, applicability to any modifications that may have occurred since the applicability dates. (The Division may retain the permit shield for original NSPS applicability based on the date of construction of the boilers.)

II. ADDITIONAL CONCERNS

1. Permittee's Discretion

In several places, the permit requires that the source operate units "in accordance with the manufacturer's recommendations or documented operating practices and procedures developed by the permittee." (See Section II, conditions 2.2, 12.3, and 18.1.1.) This language allows the permittee to define compliance determining parameters for various operation and maintenance requirements, with no apparent recourse if the State, EPA, or citizens, disagree with the permittee's decision. We believe that this provision potentially makes the compliance determining parameters unenforceable and conflicts with the requirement for enforceable emission limitations in section 504(a) of the Act and 40 CFR § 70.6(a)(6)(i).

Solution: In discussions, the Division and EPA agreed that replacing the objectionable phrase, ". . . or documented operating practices and procedures developed by the permittee," with ". . .or in accordance with good engineering practice," would correct this problem.

2. Periodic Monitoring -- Opacity Requirments (Diesel IC Engine)

Permit, Section II, Conditions 12.3.1 and 12.3.3 contain provisions for opacity observations for a General Motors 250 HP Diesel Fired IC Engine, #E018. These provisions suffer from some of the same flaws identified above for boilers B001, B002, and B003. Condition 12.3.1 does not require that the source actually check visible emissions during start-up, and does not specify that the Method 9 observation must occur during the start-up process. Condition 12.3.3 allows a delay of up to 60 minutes for additional Method 9 observations once an exceedance is observed. For the reasons stated above, we believe conditions 12.6.1 and 12.6.3 are insufficient to meet the periodic monitoring requirement of section 504 of the Act and 40 CFR §70.6(a)(3)(i)(B).

Solution: The permit must include provisions requiring the source to conduct qualitative observations of visible emissions after 1500 hours of engine use. If visible emissions are observed and the start-up requires longer than ten minutes, the source must immediately conduct a Method 9 test. The source must keep records of the date, time and results of

the qualitative observations. The permit must require that once an opacity exceedance is observed under either condition 12.3.1 or 12.3.2, additional Method 9 observations shall occur without break until two consecutive observations are in compliance.

3. Ozone Non-attainment Area Description

Permit, Section 1, Condition 1.2 of Section I states: "The ozone non-attainment designation was recently removed by EPA and the area is considered attainment." However, EPA reinstated the 1-hr Ozone NAAQS on July 20, 2000, (see 65 FR 45182). As a result of that action, the 1-hour ozone nonattainment designation for the Denver metropolitan area will be reinstated effective January 16, 2001. Thus, the permit text is inaccurate and misleading.

Solution: In a conversation regarding this concern, the Division suggested language to correct the problem. EPA agrees that the suggested language is adequate, and offers the following clarifications (in bold):

> "The area in which the plant operates is designated as nonattainment for carbon monoxide (CO) and particulate matter less than 10 microns (PM_{10}). Although the Denver metropolitan area was previously designated for nonattainment for **the 1-hour** ozone **standard**, this **standard was revoked in June of 1998.** However, all SIP-approved requirements continue to apply in order to prevent backsliding under the provisions of Section **110(l)** of the Federal Clean Air Act.
>
> "A July 20, 2000 Federal Register **(see 65 Fed. Reg. 45182)** indicated that the **1-hour ozone** nonattainment **designation will** be reinstated **on January 16, 2001**. In addition, **based upon preliminary data, it appears that** Denver recently violated the new 8-hour ozone standard and it is the Division's understanding that EPA will issue a nonattainment **designation** Federal Register notice for the Metro area even though **the EPA's ability to implement** the standard is under judicial review as of the issuance date of this permit."

4. Stylistic Concerns with Permit Structure

Our July 24, 2000, comment letter regarding the draft permit for this source, addressed several instances where this permit's structure makes it confusing and potentially misleading. Unclear cross referencing, splitting explanations of a given applicable requirement between a summary table and text, and providing numerical expressions without defining the equation or values being used, are some examples. We should note that such stylistic concerns are not "normal" for Colorado's Title V permits.

Solution: We ask the Division to consider the comments made in our earlier letter as it prepares this and future Title V permits.

5. Missing Applicable Requirement Citations

Permit, Section II, Conditions 2.5, 2.6, 2.7, and 2.8, identify the underlying applicable requirements for the permit terms, however, neither the table nor the text addresses the opacity requirements. According to 40 CFR §70.6(a)(1)(I), "the permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based."

Solution: The permit must be revised to include these references. The Division has indicated that it will insert references to Regulation No. 1 in the appropriate conditions. EPA notes that the Division must be careful to reference the SIP-approved version of Regulation No. 1.

6. Alternative Monitoring for NSPS

a. Permit, Section II, Condition 19.2.2 allows the source to solicit prior written approval from the Colorado Air Pollution Control Division for "alternative monitoring systems, alternative reference methods, or any other alternatives for the required continuous emission monitoring systems." As this section concerns continuous emission monitoring required under any federal requirement, including the EPA-approved SIP and the NSPS requirements, such approval can only be granted by the EPA Administrator. The July 10, 1998, memorandum from John Seitz entitled "Delegation of 40 CFR Part 63 General Provisions Authority to State and Local Air Pollution Control Agencies," which includes Parts 60 and 61, discusses case-by-case criteria under which evaluation and approval of alternative monitoring provisions under various federal regulations can be delegated to state and local agencies.

Solution: Permit Section II Condition 19.2.2, must be revised to comport with the requirements of the New Source Performance Standards for granting approval to alternative procedures. See, 40 CFR § 60.13. Condition 19.2.2 could be revised to state: "Alternative monitoring systems, alternative reference methods, or any other alternatives for the required continuous emission monitoring systems shall not be used unless the permittee obtains prior written approval from **the appropriate agency, either the U.S. EPA** or the Division ...."

b. Permit, Appendix G details the emission calculation procedure for SO_2 and NO_X emissions, which applies to boilers B004 and B005, both of which are subject to NSPS Subpart D. The appendix states: "In a March 31, 1998 letter from the Division to TriGen, the Division stated it concurred that oxygen sensors would not be required to compute lb/MMBTU because the stack gas flow rate was not being

continuously monitored." However, the authority to approve an alternative procedure such as this one cannot be delegated from the EPA to the State. NSPS Subpart D, at 40 CFR § 60.45(e)(1), states: "Alternative procedures approved *by the Administrator* shall be used when measurements are on a wet basis." The general provisions of NSPS, at 40 CFR § 60.2, define "Administrator" as the Administrator of the EPA *or his authorized representative*.

State adoption and implementation of an NSPS Subpart does not automatically make the State the *authorized representative* for approving alternative procedures under that Subpart. Instead, it is up to EPA to decide, on a *case-by-case* basis, whether authority to approve an alternative procedure under NSPS can be delegated to a State. This is explained in EPA's national guidance dated August 24, 1993 ("Procedures for Handling Requests for Minor and Major Alternatives to Compliance and Testing Methods"). While the 1993 guidance was later revised on July 10, 1998, the contents pertaining to alternative requests remained the same.

In short, the 1993 guidance states that if an alternative to an NSPS testing method or procedure is not a "minor" change in method or procedure, as described in the guidance and determined by EPA, then authority to approve the alternative cannot be delegated to the State. It appears the alternative approved by the State for TriGen is not a "minor" change.

Solution: TriGen must seek approval for the alternative monitoring procedure from EPA directly. Appendix G must be deleted and the procedures required in the 40 CFR § 60 Subpart A and D must be followed until or unless an alternative is granted.

On July 27, 2000, the Division submitted a letter to EPA acknowledging that EPA should have been the lead agency for processing the alternative monitoring request.

7. Compliance Demonstration for Emission Limitations for Coal and Ash Handling Units and Fly-ash Collection Units

Permit, Section II, subsections 5 through 11, cover the coal and ash handling units and fly-ash collection units. Each of these units is required to meet particulate matter and opacity emission limits, and throughput restrictions, established through various construction permits. Particulate matter emissions from these units are computed utilizing AP-42 emission factors and accounting for the fabric filter controls at each emission point. We have two concerns with the permit provisions for each of these units: (1) while the permit specifies that AP-42 emission factors are to be used, it does not delineate monitoring or recordkeeping for the various parameters that are necessary inputs to the AP-42

calculations, and (2) the TRD indicates that a control efficiency of 99.9% is assumed for the fabric filters, but the permit lacks both periodic monitoring of parameters that would indicate that the control device is functioning properly, and operation and maintenance requirements to support the assumed fabric filter control efficiencies.

Solution: (1) The permit must require that the source monitor and keep records of the data that is necessary for calculating its particulate matter emissions from these coal and ash handling units. The parameters needed for each unit should be specified. (2) The permit must include appropriate operation, maintenance, monitoring, and recordkeeping to show that the fabric filters are functioning properly. Parameters to monitor could include filter differential pressures, logs of maintenance activities, etc.