

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

THIS DATE 8/16/82  
Administrative Law Division



STATE OF WEST VIRGINIA

OFFICE OF THE SECRETARY OF STATE

CHARLESTON 25305

A. JAMES MANCHIN  
SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
Title or Position

Air Pollution Control Commission,  
Department or Division, hereby submit to record in

the State Register on 8 1/2 x 11" paper two (2) copies of

( ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

( ) proposed rules and regulations superseding rules and regulations already on file;

( ) notice of hearing;

( ) findings and determinations;

(X) rules and regulations; or Temporary Regulation XIX-TT - "Requirements for Preconstruction Review, Determination of Emission Offsets for Proposed New, Modified or Reconstructed Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants"

( ) other - specify ( )  
This filing pertains to

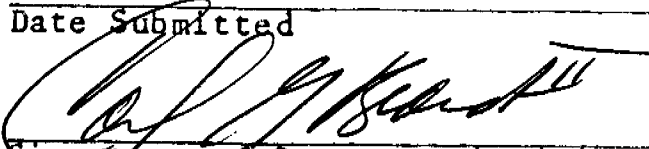
Chapter 16  
Article 20  
Series XIX-TT  
Section \_\_\_\_\_  
Page No. \_\_\_\_\_

( ) proposed rules and regulations are required to go to Legislative Rule Making Committee;

(X) ~~proposed~~ rules and regulations are excluded from Legislative Rule Making Committee;

August 16, 1982

Date Submitted

  
Signature of Person Authorizing  
Secretary  
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Temporary Regulation XIX-TT-Requirements for Pre-construction Review,  
Determination of Emission Offsets for Proposed New or Modified Stationary  
Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants

INDEX

Section 1. General

- 1.01. - Scope
- 1.02. - Authority
- 1.03. - Filing Date
- 1.04. - Effective Date

Section 2. Definitions

- 2.01. - "Actual Emissions"
- 2.02. - "Allowable Emissions"
- 2.03. - "Applicable Regulations"
- 2.04. - "Applicant"
- 2.05. - "Air Pollutants"
- 2.06. - "Air Quality Control Region (AQCR)"
- 2.07. - "Baseline"
- 2.08. - "Begin Actual Construction"
- 2.09. - "Code"
- 2.10. - "Commission"
- 2.11. - "Commence"
- 2.12. - "Construction"
- 2.13. - "Director"
- 2.14. - "Emissions"
- 2.15. - "Facility"
- 2.16. - "Fugitive Emissions"

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/16/82  
Administrative Law Division

- 2.17. - "Intrapollutants Emission Offsets"
- 2.18. - "Intrasource Pollutants"
- 2.19. - "Lowest Achievable Emission Rate (LAER)"
- 2.20. - "Major Modification"
- 2.21. - "Major Stationary Source"
- 2.22. - "National Ambient Air Quality Standard (NAAQS)"
- 2.23. - "Necessary Pre-construction Approvals or Permits"
- 2.24. - "Net Emissions Increase"
- 2.25. - "Nonattainment Area"
- 2.26. - "Offset"
- 2.27. - "Person"
- 2.28. - "Potential to Emit"
- 2.29. - "Reasonable Further Progress"
- 2.30. - "Resource Recovery Facility"
- 2.31. - "Secondary Emissions"
- 2.32. - "Significant"
- 2.33. - "Significant Impact"
- 2.34. - "Source"
- 2.35. - "Temporary Source"

Section 3. Applicability of Regulation

Section 4. Conditions for a Permit Approval for Proposed Major Sources That  
Would Contribute to a Violation of a NAAQS

Section 5. Conditions for Permit Approval for Sources Locating in Attainment  
or Unclassifiable Areas That Would Cause a New Violation of a  
NAAQS

Section 6. Exemption from Certain Conditions

Section 7. Baseline for Determining Credit for Emission Offsets

- Section 8. Location of Offsetting Emissions
- Section 9. Administrative Procedures for Emission Offset Proposals
- Section 10. Control of Fugitive Emissions
- Section 11. Offsetting of Secondary Emissions
- Section 12. Bubble Concept for Intrasource Pollutants
- Section 13. Discretionary Decisions Made by the Director

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Air Pollution Control Commission

Chapter 16-20  
Series XIX  
(1982)

Subject: Temporary Regulation XIX-TT - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

---

Section 1. General

1.01. Scope - (a) It is the intent of the Commission that all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act Amendments of 1977 and this regulation.

These conditions are designed to ensure that the major new or modified source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions will be obtained from existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

(b) Further, it is the intent of the Commission to extend to the owners or operators of existing sources an alternative emission reduction concept, called the "Bubble Concept", which permits a greater burden of control where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or unduly delay compliance with the requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, (the Code) or the Federal Clean Air Act, as amended, nor the applicable regulations, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

1.02. Authority

This temporary regulation is issued under authority of West Virginia Code, Chapter 16, Article 20.

1.03. Filing Date

This temporary regulation is promulgated on the 11th day of August, 1982, and filed on the 16th day of August, 1982, in the Secretary of State's Office.

1.04. Effective Date

This temporary regulation becomes effective on the 16th day of August, 1982.

Section 2.        Definitions

- 2.01. "Actual Emissions", shall mean the actual rate of emissions of a pollutant from a facility or source using actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which such production rate shall be on a pounds per hour basis and which such selected time period shall be a two-year period unless a determination is made by the Director that a different production rate or time period is more representative of normal operation or is necessary to carry out the intent of this regulation. For any facility or source which has not begun normal operations, actual emissions equal the potential to emit of the facility or source on the date of filing of the application to construct.

- 2.02. "Allowable Emissions", shall mean the emissions rate calculated using the maximum rate capacity of the source and the most stringent of the following:
- (a) The applicable regulations for such source; or,
  - (b) The emissions rate specified as a permit condition;
  - (c) Any other legal requirements enforceable by the Commission under Chapter 16, Article 20, of the Code and by the United States Environmental Protection Agency (EPA) under Section 113 of the Clean Air Act.
- 2.03. "Applicable Regulations", shall mean, for the purpose of this regulation, the West Virginia Administrative Regulations of the Air Pollution Control Commission as promulgated pursuant to the Code of West Virginia, of 1931, as amended, and regulations of the Environmental Protection Agency promulgated pursuant to the Clean Air Act.
- 2.04. "Applicant", shall mean any person who makes application to the Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of this regulation.
- 2.05. "Air Pollutants", shall mean solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.
- 2.06. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:
- Region I - made up of the counties of Brooke, Hancock, Marshall and Ohio;
  - Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;
  - Region III - made up of the counties of Cabell, Mason and Wayne;
  - Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;
  - Region V - made up of the counties of Boone, Lincoln, Logan, McDowell,

Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;

Region X - made up of the counties of Berkeley, Jefferson, and Morgan.

2.07. "Baseline", shall mean the limitation of emissions of a source, as determined by the applicable regulations in effect at the time of the application to construct or modify a source is filed and as more fully defined in Section 7 herein.

2.08. "Begin Actual Construction", shall mean, in general, initiation of physical on-site construction activities on an emissions facility or source which are of a permanent nature other than preparator activities. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities which mark the initiation of the change.

- 2.09. "Code", shall mean principally Chapter 16, Article 20, of the Code of West Virginia of 1931, as amended, and, where applicable, Chapter 20, Article 5E of the Code of West Virginia of 1931, as amended.
- 2.10. "Commission", shall mean the West Virginia Air Pollution Control Commission.
- 2.11. "Commence", shall mean as applied to construction of a major stationary source or major modification that the owner or operator has all necessary pre-construction approvals or permits and either has:
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
  - (b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
- 2.12. "Construction", shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.
- 2.13. "Director", shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.14. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are defined and quantifiable and result from activities related to such source or facility.
- 2.15. "Facility", shall mean an identifiable piece of process equipment. A source is composed of one or more pollutant emitting facilities.

- 2.16. "Fugitive Emissions", shall mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- 2.17. "Intrapollutant Emission Offsets", shall mean that emissions offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub> reductions or coke plant particulate matter may not be offset against boiler fly ash.)
- 2.18. "Intrasource Pollutants", shall mean air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.
- 2.19. "Lowest Achievable Emission Rate (LAER)", shall mean, for any source, that rate of emissions based on the following, whichever is more stringent:
- (a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or
  - (b) The most stringent emission limitation which is achieved in practice by such class or category of source.
- This term applied to a new or modified facility, means the lowest achievable emission rate for such facility within the source. In no event shall the application of this term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.
- 2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase

of any pollutant subject to regulation by the Commission. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair and replacement;
- (b) Use of alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of natural gas curtailment plan pursuant to the Federal Power Act;
- (c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act of 1977, as amended;
- (d) Use of alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (e) Use of an alternative fuel or raw material by a stationary source which:
  - (1) The source was capable of accomodating before December 21, 1976, unless such change would be prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or
  - (2) The source is approved to use under any permit issued under regulations approved pursuant to this section;
- (f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24;

(g) Any change in ownership at a stationary source.

2.21. "Major Stationary Source", shall mean:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation by the Commission; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph 2.21 (a) as a major stationary source if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

2.22 "National Ambient Air Quality Standard (NAAQS)", shall mean the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.23 "Necessary Pre-construction Approvals or Permits", shall mean, for the purpose of this regulation, those permits or approvals required by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder. Where a consent order is required to be submitted to the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the U. S. Environmental Protection Agency approves such consent order for inclusion in the State Implementation Plan.

2.24. "Net Emissions Increase", shall mean the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions from the source that are contemporaneous with the particular change and are otherwise creditable.

(1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on a particular change commences, and

(b) The date that the increase from the particular change occurs.

(2) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

(3) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(4) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable by the Commission under the Code and by EPA under Section 113 of the Clean Air Act at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing any permit under this regulation or in a demonstration of reasonable further progress; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(5) An increase that results from a physical change at a source occurs when the emissions facility on which construction occurred becomes

operational and begins to emit a particular pollutant. Any replacement facility that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

- 2.25. "Nonattainment Area", shall mean for the purpose of this regulation, those areas designated by the Commission in accordance with Section 107(d) of the Clean Air Act as not having attained National Ambient Air Quality Standards for specific air pollutants
- 2.26. "Offset", and "emission offset", shall mean an emission reduction of a given pollutant achieved at an existing source (or facility within such source) that allows for the emission of such given pollutant at a different proposed source (or facility within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility within such source), is greater, on a pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for the emission of such given pollutant at a different facility within the same existing source.
- 2.27. "Person", shall mean any and all persons, natural or artificial, including the State of West Virginia or any other state, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.
- 2.28. "Potential to Emit", shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any

physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is legally enforceable by the Commission under the Code and by the U. S. Environmental Protection Agency under Section 113 of the Clean Air Act. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality Standards "(NAAQS)".

2.30. "Resource Recovery Facility", shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this regulation.

2.31. "Secondary Emissions", shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself.

Secondary emissions may include, but are not limited to:

(a) Emissions from vessels, trains, or motor vehicles coming to or from the source; and

(b) Emissions from off-site support emissions units which would be constructed or would otherwise increase emissions as a result of the construction or modification of a major source.

2.32. "Significant", shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants:

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

2.33. "Significant Impact", shall mean an increase in the ambient air quality for a particular pollutant as follows:

	Averaging time (hours)				
	Annual	24	8	3	1
Pollutant:					
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5.0 ug/m <sup>3</sup>	25.0 ug/m <sup>3</sup>		
TSP	1.0 ug/m <sup>3</sup>	5.0 ug/m <sup>3</sup>			
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>				
CO		0.5 mg/m <sup>3</sup>		2.0 mg/m <sup>3</sup>	

2.34 "Source", shall mean all structures, buildings, facilities, equipment, or installations which are of the same industrial grouping (i.e., the same two digit code as described in the Federal Standard Industrial Classification Manual, 1972, amended 1977) and located on one or more contiguous or

adjacent properties and which are owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

- 2.35. "Temporary Source", and "sources of temporary emissions", shall mean for a source located in a non-attainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section 2, of the Code of West Virginia, 1931, as amended.

Section 3            Applicability

- 3.01. This regulation shall apply to all major stationary sources intending to locate in a designated nonattainment area and to all major modifications to any existing sources located in a designated nonattainment area. This regulation shall also apply to all proposed major stationary sources and to all major modifications to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. This regulation shall only apply to such proposed major stationary sources or major modifications when the expected pollutant, when discharged, would require classification of such proposed source or modification as a major stationary source or major modification and when the expected pollutant is the same pollutant for which the area of location or significant impact was designated nonattainment. Sections 1, 2, 10, 12, and 13 shall also apply to all major stationary sources located within the State.

- 3.02. The determination under this regulation of whether such a source will cause a violation of a NAAQS or a significant impact shall be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

- 3.03 This regulation shall apply to portable facilities intending to locate or relocate anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. If the Director makes a determination of applicability pursuant to Sub-Section 3.02, then such portable facilities shall be considered as a new major stationary source for all purposes of this regulation and location or relocation of such source shall be considered construction.
- 3.04. Sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, or resource recovery facilities utilizing municipal solid waste to provide more than 50 percent of the heat input for generating steam or electricity may be granted an exemption from the requirements of this regulation by the Commission upon a demonstration by such source that such source will not significantly interfere with reasonable further progress toward attaining and maintaining the applicable NAAQS, except, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.
- 3.05. Any new or modified source to which this regulation is applicable shall not begin actual construction until all necessary preconstruction approvals and permits, including the permit under this regulation, have been issued.

Conditions for a Permit Approval for Proposed Major

Sources That Would Contribute to a Violation of NAAQS

4.01. (a) Upon determination by the Director that a proposed new major stationary source or major modification will locate within a nonattainment area, or that a proposed new major stationary source or major modification to be built outside a nonattainment area will have a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved), to meet the following conditions:

(1) The proposed major stationary source or major modification is required to meet the lowest achievable emission rate (LAER) for such source;

(2) The applicant must certify that all existing sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia are in compliance with the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or the applicable regulations, or is in compliance with a compliance program or a court decree which is enforceable under the Code and Section 113 of the Clean Air Act;

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new major stationary source or major modification (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets are acceptable;

(4) The emissions offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of Sub-Section 4.01 (a)

(3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or economic limitations on the application of measurement methodology to a particular source or class of sources would make the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

Section 5. Conditions for Permit Approval for Sources Locating  
in Attainment or Unclassifiable Areas That Would Cause  
a New Violation of a NAAQS

Upon determination by the Director that the emissions from a proposed new major stationary source or major modification locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved) to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapollutant emission offsets are acceptable.

Section 6.        Exemptions from Certain Conditions

6.01.        (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (a) (3) and (4), and Section 5:

(1) Resource recovery facilities burning municipal solid waste; and

(2) Sources which must switch fuels:

(i) due to lack of adequate fuel supplies; or

(ii) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (a) (3) and (4) and Section 5, and that such efforts were unsuccessful; and

(2) The applicant has secured all reasonably available emission offsets; and

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely affected.

Section 7.        Baseline for Determining Credit for Emission Offsets

7.01.        (a) The baseline for determining credit for emission offsets will be the allowable emissions in effect at the time the application to construct or modify a major stationary source is filed.

(b) Emission offsets shall be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate.

(c) The Director may specify other averaging periods, such as tons per year, as an alternative to the pounds per hour basis if necessary to carry

out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

(d) Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.

7.03. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

7.04. (a) The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time the application is filed.

(b) No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date the application is filed.

(c) No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some

future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.05. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be proposed by the applicant in the permit application and embodied in the permit or as more fully set forth in Section 9 herein.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production less than three (3) years prior to the date of permit application, and the proposed source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the proposed source.

7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1, 1, 1-Trichlorethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

#### Section 8. Location of Offsetting Emissions

8.01. Offsets shall be obtained from sources located as close to the proposed major stationary or major modified source site as possible.

8.02. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed major stationary source or major modification provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new or modified source location;

(2) Emission offsets for sources of sulfur dioxide (SO<sub>2</sub>), and total suspended particulate (TSP), should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

(b) If such allowance is granted, as provided for in Sub-Section (a), of this Section, the Commission should increase the ratio of the required offsets for such source.

(c) In order to ensure that the emission offsets will provide a positive net air quality benefit, the Director may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO<sub>2</sub>) and total suspended particulates (TSP), the source's allowable emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality

benefit. It may, however, be assumed that if the emission offsets are obtained from an existing or shutdown source on the same premises or in the immediate vicinity of the proposed major stationary source or major modification and the pollutants disperse from substantially the same effective stack height, the air quality test of Sub-Section 4.01 (u) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

(3) (a) Proposed sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) Proposed VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A proposed VOC source may be exempt from these requirements if the applicant can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO<sub>x</sub> to form additional ozone.

Section 9 Administrative Procedures for Emission Offset Proposals

9.01. Emission offsets may be proposed either by the applicant for the proposed major stationary source or major modification or by the local community or the State.

(a) The emission offsets committed to must be accomplished by the applicant's proposed start-up date, except when such proposed source is a replacement for a source that is being shut down in order to provide the necessary benefits; in such cases the Director may allow up to 180 days for shakedown of the new source before the existing source is required to cease operation. Such allowances must be requested by the applicant and contained, if granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major stationary source or major modification, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision in the neighboring State and must be legally enforceable by both such neighboring State and the Commission in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act.

- 9.02 (a) The applicant may propose emission offsets which involve:
- (1) Reductions from sources controlled by the applicant; and/or
  - (2) Reductions from neighboring sources not controlled by the applicant.
- (b) A state or local community which desires that a major stationary source or major modification locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such proposed source.

9.03. Any emission offset proposal described in Section 9.02 above must be embodied either in the applicant's permit application and permit if such offsets are directly controlled by the applicant or if from neighboring sources located in the State not controlled by the applicant, in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the US EPA for inclusion in the State Implementation Plan. (Note: See Section 2.23. regarding necessary pre-construction approvals or permits.)

Section 10. Control of Fugitive Emissions

Fugitive emissions associated with a proposed major stationary source or major modification subject to this regulation shall not be excluded from the provisions of this regulation.

Section 11 Offsetting of Secondary Emissions

11.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the proposed major stationary source or major modification is subject to this regulation for emission of that same pollutant.

11.02. For the purposes of this regulation, secondary emissions must be shown as specific and well-defined, must be quantifiable, and must impact the nonattainment area.

11.03. Secondary emissions shall not be considered in determining whether the significant impact levels as defined in Section 2.33 would be exceeded.

11.04. (a) For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02. (d).

(2) For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

(b) If the applicant and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the applicant has the burden of proving it is correct by performing the necessary modeling.

Section 12. Bubble Concept for Intrasource Pollutants

12.01 The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of control technology. No bubble concept design shall be approved or allowed to vary or alter New Source Performance Standards (40 CFR Part 60) and National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61).

12.02 It is the responsibility of the owner or operator of the source to develop its specific bubble concept design. The owner or operator also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards or applicable regulations.

12.03 The Commission shall not approve any bubble concept design without first giving due notice and holding a public hearing, on a case-by-case


basis. Such approved bubble concept design shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code.

12.04 An approved bubble concept design shall be in effect for any such source for a period of no more than three years from the date of issuance for sources located in nonattainment areas and five years for sources located in attainment areas. At the end of such three or five-year period, the Commission shall review the bubble concept design for such source and may extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate.

Section 13. Discretionary Decisions Made by the Director

Any discretionary decision made by the Director as provided herein may be presented to the Commission for review by petition . The consideration of any such review shall be discretionary with the Commission.

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Temporary Regulation Series XIX-TT (1982) as adopted on the 11th day of August, 1982.



Carl G. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

A. JAMES MANCHIN  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/12/82  
Administrative Law Division

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
Title or Position

Air Pollution Control Commission, hereby submit to record in  
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- ( ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ( ) proposed rules and regulations superseding rules and regulations already on file;
- ( ) notice of hearing;
- ( ) findings and determinations;
- (X) rules and regulations; or
- (X) other - specify ( Fiscal note and amendments to proposed regulation

This filing pertains to

Chapter 16  
Article 20  
Series XIX  
Section \_\_\_\_\_  
Page No. \_\_\_\_\_

- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- ( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;

August 13, 1982  
Date Submitted

Carl G. Beard II  
Signature of Person Authorizing  
this Filing Secretary

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Regulation XIX-Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants

INDEX

Section 1. General

- 1.01. - Scope
- 1.02. - Authority
- 1.03. - Filing Date
- 1.04. - Effective Date

Section 2. Definitions

- 2.01. - "Actual Emissions"
- 2.02. - "Allowable Emissions"
- 2.03. - "Applicable Regulations"
- 2.04. - "Applicant"
- 2.05. - "Air Pollutants"
- 2.06. - "Air Quality Control Region (AQCR)"<sup>a</sup>
- 2.07. - "Baseline"
- 2.08. - "Begin Actual Construction"
- 2.09. - "Code"
- 2.10. - "Commission"
- 2.11. - "Commence"
- 2.12. - "Construction"
- 2.13. - "Director"
- 2.14. - "Emissions"
- 2.15. - "Facility"
- 2.16. - "Fugitive Emissions"

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/12/87  
Administrative Law Division

- 2.17. - "Intrapollutants Emission Offsets"
- 2.18. - "Intrasource Pollutants"
- 2.19. - "Lowest Achievable Emission Rate (LAER)"
- 2.20. - "Major Modification"
- 2.21. - "Major Stationary Source"
- 2.22. - "National Ambient Air Quality Standard (NAAQS)"
- 2.23. - "Necessary Pre-construction Approvals or Permits"
- 2.24. - "Net Emissions Increase"
- 2.25. - "Nonattainment Area"
- 2.26. - "Offset"
- 2.27. - "Person"
- 2.28. - "Potential to Emit"
- 2.29. - "Reasonable Further Progress"
- 2.30. - "Resource Recovery Facility"
- 2.31. - "Secondary Emissions"
- 2.32. - "Significant"
- 2.33. - "Significant Impact"
- 2.34. - "Source"
- 2.35. - "Temporary Source"

Section 3. Applicability of Regulation

Section 4. Conditions for a Permit Approval for Proposed Major Sources That  
Would Contribute to a Violation of a NAAQS

Section 5. Conditions for Permit Approval for Sources Locating in Attainment  
or Unclassifiable Areas That Would Cause a New Violation of a  
NAAQS

Section 6. Exemption from Certain Conditions

Section 7. Baseline for Determining Credit for Emission Offsets

Section 8. Location of Offsetting Emissions

Section 9. Administrative Procedures for Emission Offset Proposals

Section 10. Control of Fugitive Emissions

Section 11. Offsetting of Secondary Emissions

Section 12. Bubble Concept for Intrasource Pollutants

Section 13. Discretionary Decisions Made by the Director

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Air Pollution Control Commission

Chapter 16-20  
Series XIX  
(1982)

Subject: Regulation XIX - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

---

Section 1. General

1.01. Scope - (a) It is the intent of the Commission that all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act Amendments of 1977 and this regulation.

These conditions are designed to ensure that the major new or modified source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions will be obtained from existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

(b) Further, it is the intent of the Commission to extend to the owners or operators of existing sources an alternative emission reduction concept, called the "Bubble Concept", which permits a greater burden of control where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or unduly delay compliance with the requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, (the Code) or the Federal Clean Air Act, as amended, nor the applicable regulations, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

1.02. Authority

This regulation is issued under authority of West Virginia Code, Chapter 16, Article 20.

1.03. Filing Date

This regulation is promulgated on the 11th day of August, 1982, and filed on the 13th day of August, 1982, in the Secretary of State's Office.

1.04. Effective Date

This regulation becomes effective on the 15th day of September, 1982.

Section 2.        Definitions

2.01. "Actual Emissions", shall mean the actual rate of emissions of a pollutant from a facility or source using actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which such production rate shall be on a pounds per hour basis and which such selected time period shall be a two-year period unless a determination is made by the Director that a different production rate or time period is more representative of normal operation or is necessary to carry out the intent of this regulation. For any facility or source which has not begun normal operations, actual emissions equal the potential to emit of the facility or source on the date of filing of the application to construct.

2.02. "Allowable Emissions", shall mean the emissions rate calculated using the maximum rate capacity of the source and the most stringent of the following:

(a) The applicable regulations for such source; or,

(b) The emissions rate specified as a permit condition;

(c) Any other legal requirements enforceable by the Commission under Chapter 16, Article 20, of the Code and by the United States Environmental Protection Agency (EPA) under Section 113 of the Clean Air Act.

2.03. "Applicable Regulations", shall mean, for the purpose of this regulation, the West Virginia Administrative Regulations of the Air Pollution Control Commission as promulgated pursuant to the Code of West Virginia, of 1931, as amended, and regulations of the Environmental Protection Agency promulgated pursuant to the Clean Air Act.

2.04. "Applicant", shall mean any person who makes application to the Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of this regulation.

2.05. "Air Pollutants", shall mean solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

2.06 "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:

Region I - made up of the counties of Brooke, Hancock, Marshall and Ohio;

Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;

Region III - made up of the counties of Cabell, Mason and Wayne;

Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;

Region V - made up of the counties of Boone, Lincoln, Logan, McDowell,

Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;

Region X - made up of the counties of Berkeley, Jefferson, and Morgan.

2.07. "Baseline", shall mean the limitation of emissions of a source, as determined by the applicable regulations in effect at the time of the application to construct or modify a source is filed and as more fully defined in Section 7 herein.

2.08. "Begin Actual Construction", shall mean, in general, initiation of physical on-site construction activities on an emissions facility or source which are of a permanent nature other than preparator activities. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities which mark the initiation of the change.

- 2.09. "Code", shall mean principally Chapter 16, Article 20, of the Code of West Virginia of 1931, as amended, and, where applicable, Chapter 20, Article 5E of the Code of West Virginia of 1931, as amended.
- 2.10. "Commission", shall mean the West Virginia Air Pollution Control Commission.
- 2.11. "Commence", shall mean as applied to construction of a major stationary source or major modification that the owner or operator has all necessary pre-construction approvals or permits and either has:
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
  - (b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
- 2.12. "Construction", shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.
- 2.13. "Director", shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.14. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are defined and quantifiable and result from activities related to such source or facility.
- 2.15. "Facility", shall mean an identifiable piece of process equipment. A source is composed of one or more pollutant emitting facilities.

- 2.16. "Fugitive Emissions", shall mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- 2.17. "Intrapollutant Emission Offsets", shall mean that emissions offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub> reductions or coke plant particulate matter may not be offset against boiler fly ash.)
- 2.18. "Intrasource Pollutants", shall mean air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.
- 2.19. "Lowest Achievable Emission Rate (LAER)", shall mean, for any source, that rate of emissions based on the following, whichever is more stringent:
- (a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or
  - (b) The most stringent emission limitation which is achieved in practice by such class or category of source.
- This term applied to a new or modified facility, means the lowest achievable emission rate for such facility within the source. In no event shall the application of this term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.
- 2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase

of any pollutant subject to regulation by the Commission. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act of 1977, as amended;

(d) Use of alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accomodating before December 21, 1976, unless such change would be prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24;

(g) Any change in ownership at a stationary source.

2.21. "Major Stationary Source", shall mean:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation by the Commission; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph 2.21 (a) as a major stationary source if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

2.22 "National Ambient Air Quality Standard (NAAQS)", shall mean the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.23 "Necessary Pre-construction Approvals or Permits", shall mean, for the purpose of this regulation, those permits or approvals required by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder. Where a consent order is required to be submitted to the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the U. S. Environmental Protection Agency approves such consent order for inclusion in the State Implementation Plan.

2.24. "Net Emissions Increase", shall mean the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions from the source that are contemporaneous with the particular change and are otherwise creditable.

(1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on a particular change commences, and

(b) The date that the increase from the particular change occurs.

(2) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

(3) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(4) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable by the Commission under the Code and by EPA under Section 113 of the Clean Air Act at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing any permit under this regulation or in a demonstration of reasonable further progress; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(5) An increase that results from a physical change at a source occurs when the emissions facility on which construction occurred becomes

operational and begins to emit a particular pollutant. Any replacement facility that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

- 2.25. "Nonattainment Area", shall mean for the purpose of this regulation, those areas designated by the Commission in accordance with Section 107(d) of the Clean Air Act as not having attained National Ambient Air Quality Standards for specific air pollutants
- 2.26. "Offset", and "emission offset", shall mean an emission reduction of a given pollutant achieved at an existing source (or facility within such source) that allows for the emission of such given pollutant at a different proposed source (or facility within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility within such source), is greater, on a pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for the emission of such given pollutant at a different facility within the same existing source.
- 2.27. "Person", shall mean any and all persons, natural or artificial, including the State of West Virginia or any other state, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.
- 2.28. "Potential to Emit", shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any

physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is legally enforceable by the Commission under the Code and by the U. S. Environmental Protection Agency under Section 113 of the Clean Air Act. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality Standards "(NAAQS)".

2.30. "Resource Recovery Facility", shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this regulation.

2.31. "Secondary Emissions", shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself.

Secondary emissions may include, but are not limited to:

(a) Emissions from vessels, trains, or motor vehicles coming to or from the source; and

(b) Emissions from off-site support emissions units which would be constructed or would otherwise increase emissions as a result of the construction or modification of a major source.

2.32. "Significant", shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants:

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy
- Ozone: 40 tpy of volatile organic compounds
- Lead: 0.6 tpy

2.33. "Significant Impact", shall mean an increase in the ambient air quality for a particular pollutant as follows:

	Averaging time (hours)				
	Annual	24	8	3	1
<b>Pollutant:</b>					
SO <sub>2</sub>	1.0 ug/m <sup>3</sup> .....	5.0 ug/m <sup>3</sup> .....	25.0 ug/m <sup>3</sup> .....		
TSP	1.0 ug/m <sup>3</sup> .....	5.0 ug/m <sup>3</sup> .....			
NO <sub>2</sub>	1.0 ug/m <sup>3</sup> .....				
CO			0.5 mg/m <sup>3</sup> .....		2.0 mg/m <sup>3</sup>

2.34 "Source", shall mean all structures, buildings, facilities, equipment, or installations which are of the same industrial grouping (i.e., the same two digit code as described in the Federal Standard Industrial Classification Manual, 1972, amended 1977) and located on one or more contiguous or

adjacent properties and which are owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

- 2.35. "Temporary Source", and "sources of temporary emissions", shall mean for a source located in a non-attainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section 2, of the Code of West Virginia, 1931, as amended.

Section 3            Applicability

- 3.01. This regulation shall apply to all major stationary sources intending to locate in a designated nonattainment area and to all major modifications to any existing sources located in a designated nonattainment area. This regulation shall also apply to all proposed major stationary sources and to all major modifications to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. This regulation shall only apply to such proposed major stationary sources or major modifications when the expected pollutant, when discharged, would require classification of such proposed source or modification as a major stationary source or major modification and when the expected pollutant is the same pollutant for which the area of location or significant impact was designated nonattainment. Sections 1, 2, 10, 12, and 13 shall also apply to all major stationary sources located within the State.
- 3.02. The determination under this regulation of whether such a source will cause a violation of a NAAQS or a significant impact shall be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

- 3.03 This regulation shall apply to portable facilities intending to locate or relocate anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. If the Director makes a determination of applicability pursuant to Sub-Section 3.02, then such portable facilities shall be considered as a new major stationary source for all purposes of this regulation and location or relocation of such source shall be considered construction.
- 3.04. Sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, or resource recovery facilities utilizing municipal solid waste to provide more than 50 percent of the heat input for generating steam or electricity may be granted an exemption from the requirements of this regulation by the Commission upon a demonstration by such source that such source will not significantly interfere with reasonable further progress toward attaining and maintaining the applicable NAAQS, except, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.
- 3.05. Any new or modified source to which this regulation is applicable shall not begin actual construction until all necessary preconstruction approvals and permits, including the permit under this regulation, have been issued.

Conditions for a Permit Approval for Proposed Major

Sources That Would Contribute to a Violation of NAAQS

4.01. (a) Upon determination by the Director that a proposed new major stationary source or major modification will locate within a nonattainment area, or that a proposed new major stationary source or major modification to be built outside a nonattainment area will have a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved), to meet the following conditions:

(1) The proposed major stationary source or major modification is required to meet the lowest achievable emission rate (LAER) for such source;

(2) The applicant must certify that all existing sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia are in compliance with the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or the applicable regulations, or is in compliance with a compliance program or a court decree which is enforceable under the Code and Section 113 of the Clean Air Act;

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new major stationary source or major modification (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets are acceptable;

(4) The emissions offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of Sub-Section 4.01 (a)

(3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or economic limitations on the application of measurement methodology to a particular source or class of sources would make the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

Section 5.            Conditions for Permit Approval for Sources Locating  
in Attainment or Unclassifiable Areas That Would Cause  
a New Violation of a NAAQS

Upon determination by the Director that the emissions from a proposed new major stationary source or major modification locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved) to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapollutant emission offsets are acceptable.

Section 6. Exemptions from Certain Conditions

6.01. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (a) (3) and (4), and Section 5:

(1) Resource recovery facilities burning municipal solid waste; and

(2) Sources which must switch fuels:

(i) due to lack of adequate fuel supplies; or

(ii) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (a) (3) and (4) and Section 5, and that such efforts were unsuccessful; and

(2) The applicant has secured all reasonably available emission offsets; and

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely affected.

Section 7. Baseline for Determining Credit for Emission Offsets

7.01. (a) The baseline for determining credit for emission offsets will be the allowable emissions in effect at the time the application to construct or modify a major stationary source is filed.

(b) Emission offsets shall be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate.

(c) The Director may specify other averaging periods, such as tons per year, as an alternative to the pounds per hour basis if necessary to carry

out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

(d) Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.

7.03. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

7.04. (a) The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time the application is filed.

(b) No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date the application is filed.

(c) No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some

future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.05. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be proposed by the applicant in the permit application and embodied in the permit or as more fully set forth in Section 9 herein.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production less than three (3) years prior to the date of permit application, and the proposed source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the proposed source.

7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1, 1, 1-Trichlorethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

Section 8. Location of Offsetting Emissions

8.01. Offsets shall be obtained from sources located as close to the proposed major stationary or major modified source site as possible.

8.02. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed major stationary source or major modification provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new or modified source location;

(2) Emission offsets for sources of sulfur dioxide (SO<sub>2</sub>), and total suspended particulate (TSP), should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

(b) If such allowance is granted, as provided for in Sub-Section (a), of this Section, the Commission should increase the ratio of the required offsets for such source.

(c) In order to ensure that the emission offsets will provide a positive net air quality benefit, the Director may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO<sub>2</sub>) and total suspended particulates (TSP), the source's allowable emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality

benefit. It may, however, be assumed that if the emission offsets are obtained from an existing or shutdown source on the same premises or in the immediate vicinity of the proposed major stationary source or major modification and the pollutants disperse from substantially the same effective stack height, the air quality test of Sub-Section 4.01 (a) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

(3) (a) Proposed sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) Proposed VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A proposed VOC source may be exempt from these requirements if the applicant can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO<sub>x</sub> to form additional ozone.

Section 9      Administrative Procedures for Emission Offset Proposals

9.01.      Emission offsets may be proposed either by the applicant for the proposed major stationary source or major modification or by the local community or the State.

(a) The emission offsets committed to must be accomplished by the applicant's proposed start-up date, except when such proposed source is a replacement for a source that is being shut down in order to provide the necessary benefits; in such cases the Director may allow up to 180 days for shakedown of the new source before the existing source is required to cease operation. Such allowances must be requested by the applicant and contained, if granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major stationary source or major modification, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision in the neighboring State and must be legally enforceable by both such neighboring State and the Commission in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act.

9.02      (a) The applicant may propose emission offsets which involve:

- (1) Reductions from sources controlled by the applicant; and/or
- (2) Reductions from neighboring sources not controlled by the applicant.

(b) A state or local community which desires that a major stationary source or major modification locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such proposed source.

9.03. Any emission offset proposal described in Section 9.02 above must be embodied either in the applicant's permit application and permit if such offsets are directly controlled by the applicant or if from neighboring sources located in the State not controlled by the applicant, in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the US EPA for inclusion in the State Implementation Plan. (Note: See Section 2.23. regarding necessary pre-construction approvals or permits.)

Section 10. Control of Fugitive Emissions

Fugitive emissions associated with a proposed major stationary source or major modification subject to this regulation shall not be excluded from the provisions of this regulation.

Section 11 Offsetting of Secondary Emissions

11.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the proposed major stationary source or major modification is subject to this regulation for emission of that same pollutant.

11.02. For the purposes of this regulation, secondary emissions must be shown as specific and well-defined, must be quantifiable, and must impact the nonattainment area.

11.03. Secondary emissions shall not be considered in determining whether the significant impact levels as defined in Section 2.33 would be exceeded.

11.04. (a) For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02. (d).

(2) For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

(b) If the applicant and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the applicant has the burden of proving it is correct by performing the necessary modeling.

Section 12. Bubble Concept for Intrasource Pollutants

12.01 The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of control technology. No bubble concept design shall be approved or allowed to vary or alter New Source Performance Standards (40 CFR Part 60) and National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61).

12.02 It is the responsibility of the owner or operator of the source to develop its specific bubble concept design. The owner or operator also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards or applicable regulations.

12.03 The Commission shall not approve any bubble concept design without first giving due notice and holding a public hearing, on a case-by-case

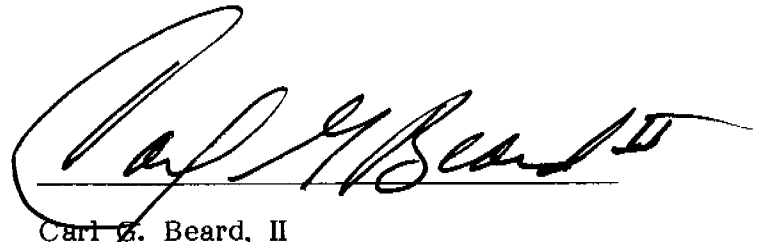
basis. Such approved bubble concept design shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code.

12.04 An approved bubble concept design shall be in effect for any such source for a period of no more than three years from the date of issuance for sources located in nonattainment areas and five years for sources located in attainment areas. At the end of such three or five-year period, the Commission shall review the bubble concept design for such source and may extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate.

Section 13. Discretionary Decisions Made by the Director

Any discretionary decision made by the Director as provided herein may be presented to the Commission for review by petition . The consideration of any such review shall be discretionary with the Commission.

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Regulation Series XIX (1982) as adopted on the 11th day of August, 1982.



Carl G. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission



**WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION  
1558 Washington Street, East  
CHARLESTON, WEST VIRGINIA 25311  
TELEPHONE: 348-2275 OR 348-3286**

**Regulation XIX**

**"Requirements for Pre-construction Review, Determination  
of Emission Offsets for Proposed New or Modified Stationary Sources  
of Air Pollutants and Bubble Concept for Intrasource Pollutants"**

**FISCAL NOTE**

**I. PURPOSE:**

Regulation XIX will bring the West Virginia APCC State Implementation Plan into compliance with US EPA requirements and allow the State of West Virginia to have an approvable State Implementation Plan by US EPA.

**II. COST:**

- (1) Certain aspects of Regulation XIX such as the Weirton Steel Corporation "Bubble" Order will enable that company to save an estimated 16 to 18 million dollars and still comply with ambient air quality standards established by the APCC and US EPA.
- (2) Cost to the APCC is insignificant because this is part of the agency's overall activities. No new personnel positions are necessary to implement these amendments to Regulation XIX.

WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION

Regulation XIX - Requirements for Pre-construction Review,  
Determination of Emission Offsets for Proposed New or Modified  
Stationary Sources of Air Pollutants and Bubble Concept for  
Intrasource Pollutants

AMENDMENTS OF THE PROPOSED REGULATION XIX  
MADE AS A RESULT OF THE EVIDENCE OR  
COMMENTS PRESENTED DURING THE HEARING AND COMMENT PERIOD

- 1) Page 17 - Section 2.33 - in chart, change "Particulates" to "TSP", and "Oxides of Nitrogen" to "NO<sub>2</sub>."  
Reason for Amendments: The amendment brings the chart into direct conformance with EPA published chart.
- 2) Page 18 - Section 3.01 - Line 10 after ". . . quality in a designated nonattainment area" - Insert - "This regulation shall only apply to such proposed major stationary sources or major modifications when the expected pollutant, when discharged, would require classification of such proposed source or modification as a major stationary source or major modification and when the expected pollutant is the same pollutant for which the area of location or significant impact was designated nonattainment".  
Reason for Amendments: Clarifies the intent of the Regulation.
- 3) Page 26 - Section 7.05(c) Line 6 - change two (2) years to "three" (3) years.  
Reason for Amendments: Provides greater flexibility for the applicant to plan replacement facilities.
- 4) Page 33 - Section 12.04 - Line 3 after ". . . no more than three years from the date of issuance - Insert - "for sources located in nonattainment areas and five years for sources located in attainment areas".  
Reason for Amendments: Provides longer review period for Bubble Concept Design (BCD) in areas which are classified attainment. Does not abrogate the Commission's right to enforce or review for cause.
- 5) Page 33 - Section 12.04 - Line 4 after ". . ." "At the end of such three" - Insert "or five. . ."  
Reason for Amendments: Same as No. 4

6) Page 3 - Section 2.01 - Line 5 after . . . "which" - Insert ". . . such production rate shall be on a pounds per hour basis and which such selected . . . "; and Line 7 after "different" amend the language to read ". . . production rate or time period is more representative of normal operation or is necessary to carry out the intent of this regulation."

Reason for amendment: Proposed by EPA and designed to set a base production rate reference standard.

7) Page 17 - Section 2.34 - Line 2 after "are" - Insert ". . . of the same industrial grouping" (i.e., the same two digit code as described in the Federal Standard Industrial Classification Manual, 1972, amended 1977) and . . ."

Reason for amendment: Required by EPA so that permit applications may be classified with nationwide uniformity.

#### ADDITIONAL AMENDMENTS MADE AS A RESULT OF STAFF PROPOSALS

8) Page 12 - Section 2.24(b) - after "in actual emissions at" change the word "at" to "from".

Reason for amendment: grammer and clarity.

9) Page 23 - Section 7.01(b) - Delete "allowable emissions" and insert "allowed".

Reason for amendment: grammer and clarity.

10) Page 34 - Delete Section 14

Reason for amendment: The requirements of Regulation XIII are required.

11) Page 15 - Section 2.28 - end of second sentence - Delete the word "legally" and Insert after the word "enforceable", "by the Commission under the Code and by the United States Environmental Protection Agency under Section 113 of the Clean Air Act.

Reason for amendment: EPA requirement.

12) Page 19 - add new Sub-section 3.05.

Reason for amendment: EPA requirement.

13) Page 33 - Section 12.01 - add new sentence "No Bubble Concept Design shall be approved or allowed to vary or alter new source performance standards (40 CFR, Part 60) and national emission standards for hazardous air pollutants (40 CFR, Part 61)."

Reason for amendment: EPA requirement.

14) Page 34 - Section 13 - strike "appeal" and insert "presented"

Reason for amendment: Clarity.

**WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION**

Regulation XIX - Requirements for Pre-construction Review,  
Determination of Emission Offsets for Proposed New or Modified  
Stationary Sources of Air Pollutants and Bubble Concept for  
Intrasource Pollutants

AMENDMENTS OF THE PROPOSED REGULATION XIX

MADE AS A RESULT OF THE EVIDENCE OR

COMMENTS PRESENTED DURING THE HEARING AND COMMENT PERIOD

- 1) Page 17 - Section 2.33 - in chart, change "Particulates" to "TSP", and "Oxides of Nitrogen" to "NO<sub>2</sub>."  
Reason for Amendments : The ammendment brings the chart into direct conformance with EPA published chart.
- 2) Page 18 - Section 3.01 - Line 10 after ". . . quality in a designated nonattainment area" - Insert - "This regulation shall only apply to such proposed major stationary sources or major modifications when the expected pollutant, when discharged, would require classification of such proposed source or modification as a major stationary source or major modification and when the expected pollutant is the same pollutant for which the area of location or significant impact was designated nonattainment".  
Reason for Amendments: Clarifies the intent of the Regulation.
- 3) Page 26 - Section 7.05(c) Line 6 - change two (2) years to "three" (3) years.  
Reason for Amendments: Provides greater flexibility for the applicant to plan replacement facilities.
- 4) Page 33 - Section 12.04 - Line 3 after . . . no more than three years form the date of issuance - Insert - "for sources located in nonattainment areas and five years for sources located in attainment areas".  
Reason for Amendments: Provides longer review period for Bubble Concept Design (BCD) in areas which are classified attainment. Does not abrogate the Commission's right to enforce or review for cause.
- 5) Page 33 - Section 12.04 - Line 4 after . . ."At the end of such three" - Insert "or five. . ."  
Reason for Amendments: Same as No. 4

6) Page 3 - Section 2.01 - Line 5 after . . . "which" - Insert ". . . such production rate shall be on a pounds per hour basis and which such selected . . . "; and Line 7 after "different" amend the language to read ". . . production rate or time period is more representative of normal operation or is necessary to carry out the intent of this regulation."

Reason for amendment: Proposed by EPA and designed to set a base production rate reference standard.

7) Page 17 - Section 2.34 - Line 2 after "are" - Insert ". . . of the same industrial grouping" (i.e., the same two digit code as described in the Federal Standard Industrial Classification Manual, 1972, amended 1977) and . . ."

Reason for amendment: Required by EPA so that permit applications may be classified with nationwide uniformity.

#### ADDITIONAL AMENDMENTS MADE AS A RESULT OF STAFF PROPOSALS

8) Page 12 - Section 2.24(b) - after "in actual emissions at" change the word "at" to "from".

Reason for amendment: grammer and clarity.

9) Page 23 - Section 7.01(b) - Delete "allowable emissions" and insert "allowed".

Reason for amendment: grammer and clarity.

10) Page 34 - Delete Section 14

Reason for amendment: The requirements of Regulation XIII are required.

11) Page 15 - Section 2.28 - end of second sentence - Delete the word "legally" and Insert after the word "enforceable", "by the Commission under the Code and by the United States Environmental Protection Agency under Section 113 of the Clean Air Act.

Reason for amendment: EPA requirement.

12) Page 19 - add new Sub-section 3.05.

Reason for amendment: EPA requirement.

13) Page 33 - Section 12.01 - add new sentence "No Bubble Concept Design shall be approved or allowed to vary or alter new source performance standards (40 CFR, Part 60) and national emission standards for hazardous air pollutants (40 CFR, Part 61)."

Reason for amendment: EPA requirement.

14) Page 34 - Section 13 - strike "appeal" and insert "presented"

Reason for amendment: Clarity.



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

A. JAMES MANCHIN  
SECRETARY OF STATE

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/13/82  
Administrative Law Division

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary  
Title or Position

Air Pollution Control Commission, hereby submit to record in  
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- ( ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ( ) proposed rules and regulations superseding rules and regulations already on file;
- ( ) notice of hearing;
- ( ) findings and determinations;
- (X) rules and regulations; or
- (X) other - specify ( Fiscal note and amendments to proposed regulation

This filing pertains to

Chapter 16  
Article 20  
Series XIX  
Section \_\_\_\_\_  
Page No. \_\_\_\_\_

- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- ( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;

August 13, 1982  
Date Submitted

Signature of Person Authorizing this Filing Secretary

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Regulation XIX-Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants

INDEX

Section 1. General

- 1.01. - Scope
- 1.02. - Authority
- 1.03. - Filing Date
- 1.04. - Effective Date

Section 2. Definitions

- 2.01. - "Actual Emissions"
- 2.02. - "Allowable Emissions"
- 2.03. - "Applicable Regulations"
- 2.04. - "Applicant"
- 2.05. - "Air Pollutants"
- 2.06. - "Air Quality Control Region (AQCR)"<sup>h</sup>
- 2.07. - "Baseline"
- 2.08. - "Begin Actual Construction"
- 2.09. - "Code"
- 2.10. - "Commission"
- 2.11. - "Commence"
- 2.12. - "Construction"
- 2.13. - "Director"
- 2.14. - "Emissions"
- 2.15. - "Facility"
- 2.16. - "Fugitive Emissions"

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 8/13/82  
Administrative Law Division

- 2.17. - "Intrapollutants Emission Offsets"
- 2.18. - "Intrasource Pollutants"
- 2.19. - "Lowest Achievable Emission Rate (LAER)"
- 2.20. - "Major Modification"
- 2.21. - "Major Stationary Source"
- 2.22. - "National Ambient Air Quality Standard (NAAQS)"
- 2.23. - "Necessary Pre-construction Approvals or Permits"
- 2.24. - "Net Emissions Increase"
- 2.25. - "Nonattainment Area"
- 2.26. - "Offset"
- 2.27. - "Person"
- 2.28. - "Potential to Emit"
- 2.29. - "Reasonable Further Progress"
- 2.30. - "Resource Recovery Facility"
- 2.31. - "Secondary Emissions"
- 2.32. - "Significant"
- 2.33. - "Significant Impact"
- 2.34. - "Source"
- 2.35. - "Temporary Source"

Section 3. Applicability of Regulation

Section 4. Conditions for a Permit Approval for Proposed Major Sources That  
Would Contribute to a Violation of a NAAQS

Section 5. Conditions for Permit Approval for Sources Locating in Attainment  
or Unclassifiable Areas That Would Cause a New Violation of a  
NAAQS

Section 6. Exemption from Certain Conditions

Section 7. Baseline for Determining Credit for Emission Offsets

Section 8. Location of Offsetting Emissions

Section 9. Administrative Procedures for Emission Offset Proposals

Section 10. Control of Fugitive Emissions

Section 11. Offsetting of Secondary Emissions

Section 12. Bubble Concept for Intrasource Pollutants

Section 13. Discretionary Decisions Made by the Director

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Air Pollution Control Commission

Chapter 16-20  
Series XIX  
(1982)

Subject: Regulation XIX - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

---

Section 1. General

- 1.01. Scope - (a) It is the intent of the Commission that all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act Amendments of 1977 and this regulation.

These conditions are designed to ensure that the major new or modified source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions will be obtained from existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

(b) Further, it is the intent of the Commission to extend to the owners or operators of existing sources an alternative emission reduction concept, called the "Bubble Concept", which permits a greater burden of control where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or unduly delay compliance with the requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, (the Code) or the Federal Clean Air Act, as amended, nor the applicable regulations, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

1.02. Authority

This regulation is issued under authority of West Virginia Code, Chapter 16, Article 20.

1.03. Filing Date

This regulation is promulgated on the 11th day of August, 1982, and filed on the 13th day of August, 1982, in the Secretary of State's Office.

1.04. Effective Date

This regulation becomes effective on the 15th day of September, 1982.

Section 2. Definitions

- 2.01. "Actual Emissions", shall mean the actual rate of emissions of a pollutant from a facility or source using actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which such production rate shall be on a pounds per hour basis and which such selected time period shall be a two-year period unless a determination is made by the Director that a different production rate or time period is more representative of normal operation or is necessary to carry out the intent of this regulation. For any facility or source which has not begun normal operations, actual emissions equal the potential to emit of the facility or source on the date of filing of the application to construct.

- 2.02. "Allowable Emissions", shall mean the emissions rate calculated using the maximum rate capacity of the source and the most stringent of the following:
- (a) The applicable regulations for such source; or,
  - (b) The emissions rate specified as a permit condition;
  - (c) Any other legal requirements enforceable by the Commission under Chapter 16, Article 20, of the Code and by the United States Environmental Protection Agency (EPA) under Section 113 of the Clean Air Act.
- 2.03. "Applicable Regulations", shall mean, for the purpose of this regulation, the West Virginia Administrative Regulations of the Air Pollution Control Commission as promulgated pursuant to the Code of West Virginia, of 1931, as amended, and regulations of the Environmental Protection Agency promulgated pursuant to the Clean Air Act.
- 2.04. "Applicant", shall mean any person who makes application to the Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of this regulation.
- 2.05. "Air Pollutants", shall mean solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.
- 2.06. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:
- Region I - made up of the counties of Brooke, Hancock, Marshall and Ohio;
  - Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;
  - Region III - made up of the counties of Cabell, Mason and Wayne;
  - Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;
  - Region V - made up of the counties of Boone, Lincoln, Logan, McDowell,

Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;

Region X - made up of the counties of Berkeley, Jefferson, and Morgan.

2.07. "Baseline", shall mean the limitation of emissions of a source, as determined by the applicable regulations in effect at the time of the application to construct or modify a source is filed and as more fully defined in Section 7 herein.

2.08. "Begin Actual Construction", shall mean, in general, initiation of physical on-site construction activities on an emissions facility or source which are of a permanent nature other than preparator activities. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities which mark the initiation of the change.

- 2.09. "Code", shall mean principally Chapter 16, Article 20, of the Code of West Virginia of 1931, as amended, and, where applicable, Chapter 20, Article 5E of the Code of West Virginia of 1931, as amended.
- 2.10. "Commission", shall mean the West Virginia Air Pollution Control Commission.
- 2.11. "Commence", shall mean as applied to construction of a major stationary source or major modification that the owner or operator has all necessary pre-construction approvals or permits and either has:
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
  - (b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
- 2.12. "Construction", shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.
- 2.13. "Director", shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.14. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are defined and quantifiable and result from activities related to such source or facility.
- 2.15. "Facility", shall mean an identifiable piece of process equipment. A source is composed of one or more pollutant emitting facilities.

- 2.16. "Fugitive Emissions", shall mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- 2.17. "Intrapollutant Emission Offsets", shall mean that emissions offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub> reductions or coke plant particulate matter may not be offset against boiler fly ash.)
- 2.18. "Intrasource Pollutants", shall mean air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.
- 2.19. "Lowest Achievable Emission Rate (LAER)", shall mean, for any source, that rate of emissions based on the following, whichever is more stringent:
- (a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or
  - (b) The most stringent emission limitation which is achieved in practice by such class or category of source.
- This term applied to a new or modified facility, means the lowest achievable emission rate for such facility within the source. In no event shall the application of this term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.
- 2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase

of any pollutant subject to regulation by the Commission. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act of 1977, as amended;

(d) Use of alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accomodating before December 21, 1976, unless such change would be prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24;

(g) Any change in ownership at a stationary source.

2.21. "Major Stationary Source", shall mean:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation by the Commission; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph 2.21 (a) as a major stationary source if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

2.22 "National Ambient Air Quality Standard (NAAQS)", shall mean the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.23 "Necessary Pre-construction Approvals or Permits", shall mean, for the purpose of this regulation, those permits or approvals required by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder. Where a consent order is required to be submitted to the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the U. S. Environmental Protection Agency approves such consent order for inclusion in the State Implementation Plan.

2.24. "Net Emissions Increase", shall mean the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions from the source that are contemporaneous with the particular change and are otherwise creditable.

(1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on a particular change commences, and

(b) The date that the increase from the particular change occurs.

(2) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

(3) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(4) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable by the Commission under the Code and by EPA under Section 113 of the Clean Air Act at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing any permit under this regulation or in a demonstration of reasonable further progress; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(5) An increase that results from a physical change at a source occurs when the emissions facility on which construction occurred becomes

operational and begins to emit a particular pollutant. Any replacement facility that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

2.25. "Nonattainment Area", shall mean for the purpose of this regulation, those areas designated by the Commission in accordance with Section 107(d) of the Clean Air Act as not having attained National Ambient Air Quality Standards for specific air pollutants

2.26. "Offset", and "emission offset", shall mean an emission reduction of a given pollutant achieved at an existing source (or facility within such source) that allows for the emission of such given pollutant at a different proposed source (or facility within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility within such source), is greater, on a pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for the emission of such given pollutant at a different facility within the same existing source.

2.27. "Person", shall mean any and all persons, natural or artificial, including the State of West Virginia or any other state, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

2.28. "Potential to Emit", shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any

physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is legally enforceable by the Commission under the Code and by the U. S. Environmental Protection Agency under Section 113 of the Clean Air Act. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality Standards "(NAAQS)".

2.30. "Resource Recovery Facility", shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this regulation.

2.31. "Secondary Emissions", shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself.

Secondary emissions may include, but are not limited to:

(a) Emissions from vessels, trains, or motor vehicles coming to or from the source; and

(b) Emissions from off-site support emissions units which would be constructed or would otherwise increase emissions as a result of the construction or modification of a major source.

2.32. "Significant", shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants:

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

2.33. "Significant Impact", shall mean an increase in the ambient air quality for a particular pollutant as follows:

	Averaging time (hours)				
	Annual	24	8	3	1
Pollutant:					
SO <sub>2</sub>	1.0 ug/m <sup>3</sup> .....	5.0 ug/m <sup>3</sup> .....	25.0 ug/m <sup>3</sup> .....		
TSP	1.0 ug/m <sup>3</sup> .....	5.0 ug/m <sup>3</sup> .....			
NO <sub>2</sub>	1.0 ug/m <sup>3</sup> .....				
CO			0.5 mg/m <sup>3</sup> .....		2.0 mg/m <sup>3</sup>

2.34 "Source", shall mean all structures, buildings, facilities, equipment, or installations which are of the same industrial grouping (i.e., the same two digit code as described in the Federal Standard Industrial Classification Manual, 1972, amended 1977) and located on one or more contiguous or

adjacent properties and which are owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

- 2.35. "Temporary Source", and "sources of temporary emissions", shall mean for a source located in a non-attainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section 2, of the Code of West Virginia, 1931, as amended.

Section 3      Applicability

- 3.01. This regulation shall apply to all major stationary sources intending to locate in a designated nonattainment area and to all major modifications to any existing sources located in a designated nonattainment area. This regulation shall also apply to all proposed major stationary sources and to all major modifications to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. This regulation shall only apply to such proposed major stationary sources or major modifications when the expected pollutant, when discharged, would require classification of such proposed source or modification as a major stationary source or major modification and when the expected pollutant is the same pollutant for which the area of location or significant impact was designated nonattainment. Sections 1, 2, 10, 12, and 13 shall also apply to all major stationary sources located within the State.
- 3.02. The determination under this regulation of whether such a source will cause a violation of a NAAQS or a significant impact shall be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

- 3.03 This regulation shall apply to portable facilities intending to locate or relocate anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. If the Director makes a determination of applicability pursuant to Sub-Section 3.02, then such portable facilities shall be considered as a new major stationary source for all purposes of this regulation and location or relocation of such source shall be considered construction.
- 3.04. Sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, or resource recovery facilities utilizing municipal solid waste to provide more than 50 percent of the heat input for generating steam or electricity may be granted an exemption from the requirements of this regulation by the Commission upon a demonstration by such source that such source will not significantly interfere with reasonable further progress toward attaining and maintaining the applicable NAAQS, except, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.
- 3.05. Any new or modified source to which this regulation is applicable shall not begin actual construction until all necessary preconstruction approvals and permits, including the permit under this regulation, have been issued.

Conditions for a Permit Approval for Proposed Major

Sources That Would Contribute to a Violation of NAAQS

4.01. (a) Upon determination by the Director that a proposed new major stationary source or major modification will locate within a nonattainment area, or that a proposed new major stationary source or major modification to be built outside a nonattainment area will have a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved), to meet the following conditions:

(1) The proposed major stationary source or major modification is required to meet the lowest achievable emission rate (LAER) for such source;

(2) The applicant must certify that all existing sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia are in compliance with the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or the applicable regulations, or is in compliance with a compliance program or a court decree which is enforceable under the Code and Section 113 of the Clean Air Act;

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new major stationary source or major modification (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets are acceptable;

(4) The emissions offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of Sub-Section 4.01 (a)

(3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or economic limitations on the application of measurement methodology to a particular source or class of sources would make the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

Section 5.            Conditions for Permit Approval for Sources Locating  
in Attainment or Unclassifiable Areas That Would Cause  
a New Violation of a NAAQS

Upon determination by the Director that the emissions from a proposed new major stationary source or major modification locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved) to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapollutant emission offsets are acceptable.

Section 6. Exemptions from Certain Conditions

6.01. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (a) (3) and (4), and Section 5:

(1) Resource recovery facilities burning municipal solid waste; and

(2) Sources which must switch fuels:

(i) due to lack of adequate fuel supplies; or

(ii) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (a) (3) and (4) and Section 5, and that such efforts were unsuccessful; and

(2) The applicant has secured all reasonably available emission offsets; and

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely affected.

Section 7. Baseline for Determining Credit for Emission Offsets

7.01. (a) The baseline for determining credit for emission offsets will be the allowable emissions in effect at the time the application to construct or modify a major stationary source is filed.

(b) Emission offsets shall be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowed production rate.

(c) The Director may specify other averaging periods, such as tons per year, as an alternative to the pounds per hour basis if necessary to carry

out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

(d) Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.

7.03. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

7.04. (a) The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time the application is filed.

(b) No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date the application is filed.

(c) No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some

future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.05. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be proposed by the applicant in the permit application and embodied in the permit or as more fully set forth in Section 9 herein.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production less than three (3) years prior to the date of permit application, and the proposed source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the proposed source.

7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1, 1, 1-Trichlorethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

#### Section 8. Location of Offsetting Emissions

8.01. Offsets shall be obtained from sources located as close to the proposed major stationary or major modified source site as possible.

8.02. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed major stationary source or major modification provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new or modified source location;

(2) Emission offsets for sources of sulfur dioxide (SO<sub>2</sub>), and total suspended particulate (TSP), should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

(b) If such allowance is granted, as provided for in Sub-Section (a), of this Section, the Commission should increase the ratio of the required offsets for such source.

(c) In order to ensure that the emission offsets will provide a positive net air quality benefit, the Director may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO<sub>2</sub>) and total suspended particulates (TSP), the source's allowable emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality

benefit. It may, however, be assumed that if the emission offsets are obtained from an existing or shutdown source on the same premises or in the immediate vicinity of the proposed major stationary source or major modification and the pollutants disperse from substantially the same effective stack height, the air quality test of Sub-Section 4.01 (a) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

(3) (a) Proposed sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) Proposed VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A proposed VOC source may be exempt from these requirements if the applicant can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO<sub>x</sub> to form additional ozone.

Section 9      Administrative Procedures for Emission Offset Proposals

9.01.      Emission offsets may be proposed either by the applicant for the proposed major stationary source or major modification or by the local community or the State.

(a) The emission offsets committed to must be accomplished by the applicant's proposed start-up date, except when such proposed source is a replacement for a source that is being shut down in order to provide the necessary benefits; in such cases the Director may allow up to 180 days for shakedown of the new source before the existing source is required to cease operation. Such allowances must be requested by the applicant and contained, if granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major stationary source or major modification, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision in the neighboring State and must be legally enforceable by both such neighboring State and the Commission in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act.

9.02      (a) The applicant may propose emission offsets which involve:

- (1) Reductions from sources controlled by the applicant; and/or
- (2) Reductions from neighboring sources not controlled by the applicant.

(b) A state or local community which desires that a major stationary source or major modification locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such proposed source.

- 9.03. Any emission offset proposal described in Section 9.02 above must be embodied either in the applicant's permit application and permit if such offsets are directly controlled by the applicant or if from neighboring sources located in the State not controlled by the applicant, in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the US EPA for inclusion in the State Implementation Plan. (Note: See Section 2.23. regarding necessary pre-construction approvals or permits.)

Section 10. Control of Fugitive Emissions

Fugitive emissions associated with a proposed major stationary source or major modification subject to this regulation shall not be excluded from the provisions of this regulation.

Section 11 Offsetting of Secondary Emissions

- 11.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the proposed major stationary source or major modification is subject to this regulation for emission of that same pollutant.
- 11.02. For the purposes of this regulation, secondary emissions must be shown as specific and well-defined, must be quantifiable, and must impact the nonattainment area.
- 11.03. Secondary emissions shall not be considered in determining whether the significant impact levels as defined in Section 2.33 would be exceeded.
- 11.04. (a) For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02. (d).

(2) For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

(b) If the applicant and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the applicant has the burden of proving it is correct by performing the necessary modeling.

Section 12. Bubble Concept for Intrasource Pollutants

12.01 The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of control technology. No bubble concept design shall be approved or allowed to vary or alter New Source Performance Standards (40 CFR Part 60) and National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61).

12.02 It is the responsibility of the owner or operator of the source to develop its specific bubble concept design. The owner or operator also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards or applicable regulations.

12.03 The Commission shall not approve any bubble concept design without first giving due notice and holding a public hearing, on a case-by-case

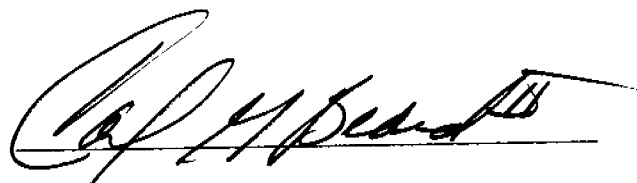
basis. Such approved bubble concept design shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code.

12.04 An approved bubble concept design shall be in effect for any such source for a period of no more than three years from the date of issuance for sources located in nonattainment areas and five years for sources located in attainment areas. At the end of such three or five-year period, the Commission shall review the bubble concept design for such source and may extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate.

Section 13. Discretionary Decisions Made by the Director

Any discretionary decision made by the Director as provided herein may be presented to the Commission for review by petition . The consideration of any such review shall be discretionary with the Commission.

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Regulation Series XIX (1982) as adopted on the 11th day of August, 1982.



Carl G. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission



**WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION  
1558 Washington Street, East  
CHARLESTON, WEST VIRGINIA 25311  
TELEPHONE: 348-2275 OR 348-3286**

Regulation XIX

"Requirements for Pre-construction Review, Determination  
of Emission Offsets for Proposed New or Modified Stationary Sources  
of Air Pollutants and Bubble Concept for Intrasource Pollutants"

FISCAL NOTE

I. PURPOSE:

Regulation XIX will bring the West Virginia APCC State Implementation Plan into compliance with US EPA requirements and allow the State of West Virginia to have an approvable State Implementation Plan by US EPA.

II. COST:

- (1) Certain aspects of Regulation XIX such as the Weirton Steel Corporation "Bubble" Order will enable that company to save an estimated 16 to 18 million dollars and still comply with ambient air quality standards established by the APCC and US EPA.
- (2) Cost to the APCC is insignificant because this is part of the agency's overall activities. No new personnel positions are necessary to implement these amendments to Regulation XIX.



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

JAMES MANCHIN  
SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
Title or Position

Air Pollution Control Commission, hereby submit to record in  
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (

This filing pertains to

Chapter 16  
Article 20  
Series XIX  
Section \_\_\_\_\_  
Page No. \_\_\_\_\_

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE \_\_\_\_\_

SECRETARY OF STATE

92 MAY 10 P 4:56

RECEIVED

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

5/10/82  
Date Submitted

Carl G. Beard II  
Signature of Person Authorizing  
this Filing

WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION

NOTICE OF PUBLIC HEARING

Pursuant to Chapter 6, Article 20 and Chapter 29A Code of West Virginia, notice is hereby given that a public hearing will be held by the West Virginia Air Pollution Control Commission concerning proposed Regulation XIX - "Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants." The hearing will be held on Friday, July 9, 1982, beginning at 9:15 AM in Conference Rooms A and B of the Capitol Complex Conference Center, Second Floor, Building No. 7, 1900 Washington Street, East, Charleston, Kanawha County, West Virginia. All interested persons are invited to attend and be heard.



Carl G. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

JAMES MANCHIN  
SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
Title or Position

Air Pollution Control Commission, hereby submit to record in  
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (

This filing pertains to

Chapter 16  
 Article 20  
 Series XIX  
 Section \_\_\_\_\_  
 Page No. \_\_\_\_\_

RECEIVED  
 92 MAY 10 PM 4:56  
 SECY. OF STATE

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

5/10/82  
Date Submitted

Carl G. Beard II  
Signature of Person Authorizing  
this Filing



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

JAMES MANCHIN  
SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
Title or Position

Air Pollution Control Commission, hereby submit to record in  
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (

This filing pertains to

Chapter 16  
Article 20  
Series XIX  
Section \_\_\_\_\_  
Page No. \_\_\_\_\_

SECY. OF STATE

92 MAY 10 P 4: 56

RECORDED

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

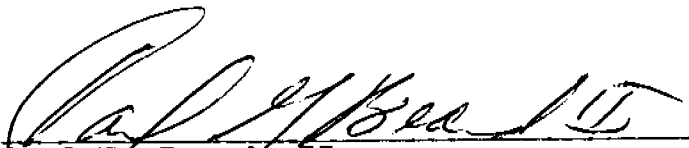
5/10/82  
Date Submitted

Carl G. Beard II  
Signature of Person Authorizing  
this Filing

WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION

NOTICE OF PUBLIC HEARING

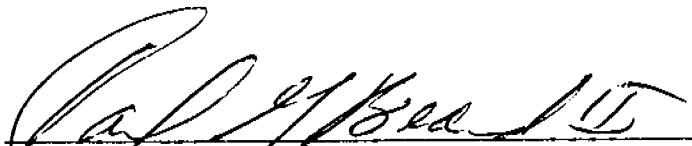
Pursuant to Chapter 6, Article 20 and Chapter 29A Code of West Virginia, notice is hereby given that a public hearing will be held by the West Virginia Air Pollution Control Commission concerning proposed Regulation XIX - "Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants." The hearing will be held on Friday, July 9, 1982, beginning at 9:15 AM in Conference Rooms A and B of the Capitol Complex Conference Center, Second Floor, Building No. 7, 1900 Washington Street, East, Charleston, Kanawha County, West Virginia. All interested persons are invited to attend and be heard.

  
\_\_\_\_\_  
Carl C. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission

WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION

NOTICE OF PUBLIC HEARING

Pursuant to Chapter 6, Article 20 and Chapter 29A Code of West Virginia, notice is hereby given that a public hearing will be held by the West Virginia Air Pollution Control Commission concerning proposed Regulation XIX - "Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants." The hearing will be held on Friday, July 9, 1982, beginning at 9:15 AM in Conference Rooms A and B of the Capitol Complex Conference Center, Second Floor, Building No. 7, 1900 Washington Street, East, Charleston, Kanawha County, West Virginia. All interested persons are invited to attend and be heard.

  
Carl G. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Regulation XIX-Requirements for Pre-construction  
Review, Determination of Emission Offsets for Proposed  
New or Modified Stationary Sources of Air Pollutants  
and Bubble Concept for Intrasource Pollutants

INDEX.

Section 1. General

- 1.01. - Scope
- 1.02. - Authority
- 1.03. - Filing Date
- 1.04. - Effective Date

Section 2. Definitions

- 2.01. - "Actual Emissions"
- 2.02. - "Allowable Emissions"
- 2.03. - "Applicable Regulations"
- 2.04. - "Applicant"
- 2.05. - "Air Pollutants"
- 2.06. - "Air Quality Control Region (AQCR)"
- 2.07. - "Baseline"
- 2.08. - "Begin Actual Construction"
- 2.09. - "Code"
- 2.10. - "Commission"
- 2.11. - "Commence"
- 2.12. - "Construction"
- 2.13. - "Director"
- 2.14. - "Emissions"
- 2.15. - "Facility"

- 2.16. - "Fugitive Emissions"
- 2.17. - "Intrapollutants Emission Offsets"
- 2.18. - "Intrasource Pollutants"
- 2.19. - "Lowest Achievable Emission Rate (LAER)"
- 2.20. - "Major Modification"
- 2.21. - "Major Stationary Source"
- 2.22. - "National Ambient Air Quality Standard (NAAQS)"
- 2.23. - "Necessary Pre-construction Approvals or Permits"
- 2.24. - "Net Emissions Increase"
- 2.25. - "Nonattainment Area"
- 2.26. - "Offset"
- 2.27. - "Person"
- 2.28. - "Potential to Emit"
- 2.29. - "Reasonable Further Progress"
- 2.30. - "Resource Recovery Facility"
- 2.31. - "Secondary Emissions"
- 2.32. - "Significant"
- 2.33. - "Significant Impact"
- 2.34. - "Source"
- 2.35. - "Temporary Source"

Section 3. Applicability of Regulation

Section 4. Conditions for a Permit Approval for Proposed  
Major Sources that Would Contribute to a  
Violation of a NAAQS

- Section 5. Conditions for Permit Approval for Sources Locating  
in Attainment or Unclassifiable Areas That Would  
Cause a New Violation of a NAAQS
- Section 6. Exemption from Certain Conditions
- Section 7. Baseline for Determining Credit for Emission  
Offsets
- Section 8. Location of Offsetting Emissions
- Section 9. Administrative Procedures for Emission Offset  
Proposals
- Section 10. Control of Fugitive Emissions
- Section 11. Offsetting of Secondary Emissions
- Section 12. Bubble Concept for Intrasource Pollutants
- Section 13. Discretionary Decisions Made by the Director
- Section 14. Conflict with Regulation XIII

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Air Pollution Control Commission

Chapter 16-20  
Series XIX  
(1982)

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 5/10/82

Subject: Regulation XIX - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

---

Section 1. General

1.01. Scope - (a) It is the intent of the Commission that all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act Amendments of 1977 and this regulation.

These conditions are designed to ensure that the major new or modified source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions will be obtained from existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

(b) Further, it is the intent of the Commission to extend to the owners or operators of existing sources an alternative emission reduction concept, called the "Bubble Concept", which permits a greater burden of control where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or unduly delay compliance with the requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, (the Code) or the Federal Clean Air Act, as amended, nor the applicable regulations, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

1.02. Authority

This regulation is issued under authority of West Virginia Code, Chapter 16, Article 20.

1.03. Filing Date

This regulation is promulgated on the \_\_\_\_\_ day of \_\_\_\_\_, 1982, and filed on the \_\_\_\_\_ day of \_\_\_\_\_, 1982, in the Secretary of State's Office.

1.04. Effective Date

This regulation becomes effective on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

2.01. "Actual Emissions", shall mean the actual rate of emissions of a pollutant from a facility or source using actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which time period shall be a two year period unless a determination is made by the Director that a different time period is more representative of normal operation. For any facility or source which has not begun normal operations, actual emissions equal the potential to emit of the facility or source on the date of filing of the application to construct.

2.02. "Allowable Emissions", shall mean the emissions rate calculated using the maximum rated capacity of the source and the most stringent of the following:

(a) The applicable regulations for such source;

or,

(b) The emissions rate specified as a permit condition;

(c) Any other legal requirements enforceable by the Commission under Chapter 16, Article 20, of the Code and by the United States Environmental Protection Agency (EPA) under Section 113 of the Clean Air Act.

2.03. "Applicable Regulations", shall mean, for the purpose of this regulation, the West Virginia Administrative Regulations of the Air Pollution Control Commission as promulgated pursuant to the Code of West Virginia, of 1931, as amended, and regulations of the Environmental Protection Agency promulgated pursuant to the Clean Air Act.

2.04. "Applicant", shall mean any person who makes application to the Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of this regulation.

2.05. "Air Pollutants", shall mean solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

2.06. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:

Region I - made up of the counties of Brooke, Hancock, Marshall and Ohio;

Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;

Region III - made up of the counties of Cabell, Mason and Wayne;

Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;

Region V - made up of the counties of Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;

Region X - made up of the counties of Berkeley, Jefferson and Morgan.

2.07. "Baseline", shall mean the limitation of emissions of a source, as determined by the applicable regulations in effect at the time the application to

construct or modify a source is filed and as more fully defined in Section 7 herein.

- 2.08. "Begin Actual Construction", shall mean, in general, initiation of physical on-site construction activities on an emissions facility or source which are of a permanent nature other than preparator activities. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities which mark the initiation of the change.
- 2.09. "Code", shall mean principally Chapter 16, Article 20, of the Code of West Virginia of 1931, as amended, and, where applicable, Chapter 20, Article 5E of the Code of West Virginia of 1951, as amended.
- 2.10. "Commission", shall mean the West Virginia Air Pollution Control Commission.
- 2.11. "Commence", shall mean as applied to construction of a major stationary source or major modification that the owner or operator has all necessary pre-construction approvals or permits and either has:
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

2.12. "Construction", shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

2.13. "Director", shall mean the Director of the West Virginia Air Pollution Control Commission.

2.14. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are defined and quantifiable and result from activities related to such source or facility.

2.15. "Facility", shall mean an identifiable piece of process equipment. A source is composed of one or more pollutant emitting facilities.

2.16. "Fugitive Emissions", shall mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

2.17. "Intrapollutant Emission Offsets", shall mean

that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub> reductions or coke plant particulate matter may not be offset against boiler fly ash).

2.18. "Intrasource Pollutants", shall mean air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.

2.19. "Lowest Achievable Emission Rate (LAER)", shall mean, for any source, that rate of emissions based on the following, whichever is more stringent:

(a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a new or modified facility, means the lowest achievable emission rate for such facility within the source. In no event shall the application of this term permit a proposed new or modified facility to emit any pollutant in excess of

the amount allowable under applicable new source standards of performance.

2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation by the Commission. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act of 1977, as amended;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24; or

(2) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any legally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24;

(g) Any change in ownership at a stationary source.

2.21. "Major Stationary Source", shall mean:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation by the Commission; or

(b) Any physical change that would occur at a stationary source not qualifying under paragraph 2.21 (a) as a major stationary source if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

2.22. "National Ambient Air Quality Standard (NAAQS)", shall mean the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.23. "Necessary Pre-construction Approvals or Permits", shall mean, for the purpose of this regulation, those permits or approvals required by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder. Where a consent order is required to be submitted to the U. S. Environmental Protection Agency for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the U. S. Environmental Protection Agency approves such consent order for inclusion in the State Implementation Plan.

2.24. "Net Emission Increase", shall mean the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences, and

(b) The date that the increase from the particular change occurs.

(2) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

(3) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(4) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable by the Commission under the Code and by EPA under Section 113 of the Clean Air Act at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing any permit under this regulation or in a demonstration of reasonable further progress; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(5) An increase that results from a physical change at a source occurs when the emissions facility on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement facility that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

2.25. "Nonattainment Area", shall mean for the purpose of this regulation, those areas designated by the Commission in accordance with Section 107(d) of the Clean Air Act as not having attained National Ambient

Air Quality Standards for specific air pollutants

2.26. "Offset", and "emission offset", shall mean an emission reduction of a given pollutant achieved at an existing source (or facility within such source) that allows for the emission of such given pollutant at a different proposed source (or facility within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility within such source), is greater, on a pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for the emission of such given pollutant at a different facility within the same existing source.

2.27. "Person", shall mean any and all persons, natural or artificial, including the State of West Virginia or any other state, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or

association of whatever nature.

- 2.28. "Potential to Emit", shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is legally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.
- 2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality Standards "NAAQS".
- 2.30. "Resource Recovery Facility", shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this

regulation.

- 2.31. "Secondary Emissions", shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself.

Secondary emissions may include, but are not limited to:

(a) Emissions from vessels, trains, or motor vehicles coming to or from the source; and

(b) Emissions from off-site support emissions units which would be constructed or would otherwise increase emissions as a result of the construction or modification of a major source.

- 2.32. "Significant", shall mean, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants:

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

- 2.33. "Significant Impact", shall mean an increase in the ambient air quality for a particular pollutant as follows:

	Averaging time (hours)				
	Annual	24	8	3	1
Pollutant:					
Sulfur Dioxide-	1.0 ug/m <sup>3</sup> ...	5 ug/m <sup>3</sup> .....	25 ug/m <sup>3</sup> ...		
Particulates -	1.0 ug/m <sup>3</sup> ...	5 ug/m <sup>3</sup> .....			
Oxides of Nitrogen -	1.0 ug/m <sup>3</sup> ...				
Carbon Monoxide-			0.5 mg/m <sup>3</sup> .....	2 mg/m <sup>3</sup>	

2.34. "Source", shall mean all structures, buildings, facilities, equipment, or installations which are located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

2.35. "Temporary Source", and "sources of temporary emissions", shall mean for a source located in a non-attainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section

2, of the Code of West Virginia, 1931, as amended.

Section 3.     Applicability

- 3.01.     This regulation shall apply to all major stationary sources intending to locate in a designated nonattainment area and to all major modifications to any existing sources located in designated nonattainment areas. This regulation shall also apply to all proposed major stationary sources and to all major modifications to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. Sections 1, 2, 10, 12, 13, 14 and 15 shall also apply to all major stationary sources located within the State.
- 3.02.     The determination under this regulation of whether such a source will cause a violation of a NAAQS or a significant impact by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.
- 3.03.     This regulation shall apply to portable facilities intending to locate or relocate anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. If the Director makes a determination of applicability pursuant to Subsection 3.02, then such portable facilities shall be considered

as a new major stationary source for all purposes of this regulation and location or relocation of such source shall be considered construction.

- 3.04. Sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, or resource recovery facilities utilizing municipal solid waste to provide more than 50 percent of the heat input for generating steam or electricity may be granted an exemption from the requirements of this regulation by the Commission upon a demonstration by such source that such source will not significantly interfere with reasonable further progress toward attaining and maintaining the applicable NAAQS, except, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

Section 4. Conditions for a Permit Approval for Proposed Major Sources That Would Contribute to a Violation of a NAAQS

- 4.01. (a) Upon determination by the Director that a proposed new major stationary source or major

modification will locate within a nonattainment area, or that a proposed new major stationary source or major modification to be built outside a nonattainment area will have a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved), to meet the following conditions:

(1) The proposed major stationary source or major modification is required to meet the lowest achievable emission rate (LAER) for such source;

(2) The applicant must certify that all existing sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia are in compliance with the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or the applicable regulations, or is in compliance with a compliance program or a court decree which is enforceable under the Code and Section 113 of the Clean Air Act.

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new major stationary source or major modification (whether or not under the same ownership) are required such that there will be reasonable further

progress toward attainment of the applicable NAAQS.  
Only intrapollutant emission offsets are acceptable;

(4) The emission offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of Sub-Section 4.01 (a) (3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or economic limitations on the application of measurement methodology to a particular source or class of sources would make the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

Section 5.        Conditions for Permit Approval for Sources  
                  Locating in Attainment or Unclassifiable Areas  
                  That Would Cause a New Violation of a NAAQS

Upon determination by the Director that the emissions from a proposed new major stationary source or major modification locating in attainment or unclassified

areas would cause a new violation of a NAAQS, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved) to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapolutant emission offsets are acceptable.

Section 6. Exemption from Certain Conditions

6.01. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (a) (3) and (4), and Section 5:

(1) Resource recovery facilities burning municipal solid waste; and

(2) Sources which must switch fuels:

(i) due to lack of adequate fuel supplies; or

(ii) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (a) (3) and

(4) and Section 5, and that such efforts were unsuccessful; and

(2) The applicant has secured all reasonably available emission offsets; and

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely affected.

Section 7. Baseline for Determining Credit for Emission Offsets

7.01. (a) The baseline for determining credit for emission offsets will be the allowable emissions in effect at the time the application to construct or modify a major stationary source is filed.

(b) Emission offsets shall be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowable emissions production rate.

(c) The Director may specify other averaging periods, such as tons per year, as an alternative to the pounds per hour basis if necessary to carry out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours

for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

(d) Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.

7.03. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

7.04. (a) The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time the application is filed.

(b) No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date the application is filed.

(c) No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.05. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be proposed by the applicant in the permit application and embodied in the permit or as more fully set forth in Section 9 herein.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production less than two (2) years prior to the date of permit application, and the proposed source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the proposed source.

7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1, 1, 1-Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

Section 8. Location of Offsetting Emissions

8.01. Offsets shall be obtained from sources located as close to the proposed major stationary or major modified source site as possible.

8.02. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed major stationary source or major modification provided that an adequate demonstration that nearby offsets were investigated and reasonable

alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new or modified source location;

(2) Emission offsets for sources of sulfur dioxide (SO<sub>2</sub>), and total suspended particulate (TSP), should be obtained from an existing or shut-down facility, on the same premises or in the immediate vicinity of the proposed source.

(b) If such allowance is granted, as provided for in Sub-Section (a), of this Section, the Commission should increase the ratio of the required offsets for such source.

(c) In order to ensure that the emission offsets will provide a positive net air quality benefit, the Director may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO<sub>2</sub>) and total suspended particulates (TSP), the source's allowable emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality benefit. It may, however, be assumed that if the emission offsets are obtained from an existing or shutdown source on the same premises or in the immediate vicinity of the proposed major stationary source or major modification and the pollutants disperse from substantially the same effective stack height, the air quality test of Sub-Section 4.01 (a) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

(3) (a) Proposed sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) Proposed VOC sources locating within 36 hours travel time (under wind conditions associated with

concentrations exceeding the NAAQS for ozone) of a nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A proposed VOC source may be exempt from these requirements if the applicant can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO<sub>x</sub> to form additional ozone.

Section 9. Administrative Procedures for Emission Offset Proposals

9.01. Emission offsets may be proposed either by the applicant for the proposed major stationary source or major modification or by the local community or the State.

(a) The emission offsets committed to must be accomplished by the applicant's proposed start-up date, except when such proposed source is a replacement for a source that is being shut down in order to provide the necessary benefits; in such cases the Director may allow up to 180 days for shakedown of the new source before the existing source is required to cease operation. Such allowances must be requested by the applicant and contained, if granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major stationary source or major modification, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision in the neighboring State and must be legally enforceable by both such neighboring State and the Commission in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act.

9.02. (a) The applicant may propose emission offsets which involve:

- (1) Reductions from sources controlled by the applicant; and/or
- (2) Reductions from neighboring sources not controlled by the applicant.

(b) A state or local community which desires that a major stationary source or major modification locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such proposed source.

9.03. Any emission offset proposal described in Section 9.02 above must be embodied either in the applicant's permit application and permit if such offsets are

directly controlled by the applicant or if from neighboring sources located in the State not controlled by the applicant, in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the US EPA for inclusion in the State Implementation Plan. (Note: See Section 2.23. regarding necessary pre-construction approvals or permits.)

Section 10. Control of Fugitive Emissions

Fugitive emissions associated with a proposed major stationary source or major modification subject to this regulation shall not be excluded from the provisions of this regulation.

Section 11. Offsetting of Secondary Emissions

11.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the proposed major stationary source or major modification is subject to this regulation for emission of that same pollutant.

11.02. For the purposes of this regulation, secondary emissions must be shown as specific and well-defined, must be quantifiable, and must impact the nonattainment area.

11.03. Secondary emissions shall not be considered in determining whether the significant impact levels as defined in Section 2.33 would be exceeded.

11.04. (a) For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02 (d).

(2) For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

(b) If the applicant and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the applicant has the burden of proving it is correct by performing the necessary modeling.

Section 12. Bubble Concept for Intrasource Pollutants

12.01. The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations,

for a given pollutant, through a different mix of control technology.

12.02. It is the responsibility of the owner or operator of the source to develop its specific bubble concept design. The owner or operator also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards or applicable regulations.

12.03. The Commission shall not approve any bubble concept design without first giving due notice and holding a public hearing, on a case-by-case basis. Such approved bubble concept design shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code.

12.04. An approved bubble concept design shall be in effect for any such source for a period of no more than three years from the date of issuance. At the end of such three-year period, the Commission shall review the bubble concept design for such source and may extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate.

Section 13. Discretionary Decisions Made by the Director

Any discretionary decision made by the Director as provided herein may be appealed to the Commission for review by petition. Such review shall be discretionary with the Commission.

Section 14. Conflict with Regulation XIII

An applicant for permit to construct or modify subject to this regulation shall not be subject to the requirements of the Commission's Regulation XIII.



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

A. JAMES MANCHIN  
 SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
 Title or Position

Air Pollution Control Commission, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (

Correction of typographical error - the word "constituent" on the second line of Page 13 should have been the word "characteristic". Enclosed corrected page.

This filing pertains to

Chapter 16 ) 20  
 Article 20 ) and 5E  
 Series XXV  
 Section 4.02.(f)(1)  
 Page No. 13

OFFICE OF  
 A. JAMES MANCHIN  
 SECRETARY OF STATE

THIS DATE 3/7/82  
 Administrative Law Division

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

May 7, 1982  
 Date Submitted

Carl G. Beard, II  
 Signature of Person Authorizing  
 this Filing Secretary

FILED IN THE OFFICE  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 5/7/82  
Administrative Law Division

listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in non-oxidizing environments,

(2) Specific wastes which meet the standard in Subsection 4.02, paragraphs (f)(1)(i), (ii) and (iii), (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

(i) Chrome (blue) trimmings and shavings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan, wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling; and

(ii) Buffing dust generated by the following subcategories of the leather tanning and finishing industry;



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

A. JAMES MANCHIN  
 SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
 Title or Position

Air Pollution Control Commission, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (

FILED IN THE OFFICE OF  
 A. JAMES MANCHIN  
 SECRETARY OF STATE

THIS DATE 12-31-81  
 Administrative Law Division

This filing pertains to Proposed Temporary Regulation XIX-A - Requirements for Preconstruction Review, Determination of Emission Offsets for Proposed new, Modified or Reconstructed Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

Chapter 16  
 Article 20  
 Series XIX-A  
 Section \_\_\_\_\_  
 Page No. \_\_\_\_\_

This filing also gives notice of a meeting of the West Virginia Air Pollution Control Commission.

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

December 31, 1981  
 Date Submitted

Carl G. Beard, II  
 Signature of Person Authorizing  
 this Filing

WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION

STATEMENT OF FACTS AND CIRCUMSTANCES CONCERNING  
TEMPORARY REGULATION XIX-A

Each state, under the Federal Clean Air Act, must file a state implementation plan. Part of the state implementation plan, according to Federal requirements, must contain rules and regulations concerning a specific regulatory process for new source review for areas where air quality standards are not currently being met. Final Federal rules have not yet been adopted.

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 12-31-81  
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Regulation XIX-A-Requirements for Preconstruction  
Review, Determination of Emission Offsets for Proposed  
New, Modified or Reconstructed Stationary Sources of  
Air Pollutants and Bubble Concept for Intrasource Pol-  
lutants

INDEX.

Section 1. Intent and Purpose

1.01. - Emission Offsets

1.02. - Bubble Concept

Section 2. Definitions

2.01. - "Actual Emissions"

2.02. - "Allowable Emissions"

2.03. - "Applicable Regulations"

2.04. - "Applicant"

2.05. - "Air Pollutants"

2.06. - "Air Quality Control Region (AQCR)"

2.07. - "Baseline"

2.08. - "Begin Actual Construction"

2.09. - "Commission"

2.10. - "Commence"

2.11. - "Construction"

2.12. - "Director"

2.13. - "Emissions"

2.14. - "Facility"

2.15. - "Fixed Capital Cost"

- 2.16. - "Fugitive Emissions"
- 2.17. - "Intrapollutants Emission Offsets"
- 2.18. - "Intrasource Pollutants"
- 2.19. - "Lowest Achievable Emission Rate (LAER)"
- 2.20. - "Major Modification"
- 2.21. - "Major Stationary Source"
- 2.22. - "National Ambient Air Quality Standard (NAAQS)"
- 2.23. - "Necessary Pre-construction Approvals or Permits"
- 2.24. - "Net Emissions Increase"
- 2.25. - "Nonattainment Area"
- 2.26. - "Offset"
- 2.27. - "Person"
- 2.28. - "Potential to Emit"
- 2.29. - "Reasonable Further Progress"
- 2.30. - "Reconstruction"
- 2.31. - "Resource Recovery Facility"
- 2.32. - "Secondary Emissions"
- 2.33. - "Significant"
- 2.34. - "Source"
- 2.35. - "Temporary Source"

Section 3. Applicability of Regulation

Section 4. Conditions for a Permit Approval for Proposed

Major Sources that Would Contribute to a

Violation of a NAAQS

- Section 5. Conditions for Permit Approval for Sources Locating  
in Attainment or Unclassifiable Areas That Would  
Cause a New Violation of a NAAQS
- Section 6. Exemption from Certain Conditions
- Section 7. Baseline for determining Credit for Emission  
Offsets
- Section 8. Location of Offsetting Emissions
- Section 9. Administrative Procedures for Emission Offset  
Proposals
- Section 10. Banking of Emission Offset Credit
- Section 11. Control of Fugitive Emissions
- Section 12. Offsetting of Secondary Emissions
- Section 13. Bubble Concept for Intrasource Pollutants
- Section 14. Discretionary Decisions Made by the Director
- Section 15. Conflict with Other Rules or Regulations
- Section 16. Effective Date

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Air Pollution Control Commission

Chapter 16-20  
Series XIX-A  
(1982)

Subject: Regulation XIX-A- Requirements for Preconstruction Review, Determination of Emission Offsets for Proposed New, Modified or Reconstructed Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

---

Section 1. Intent and Purpose

1.01. Emission Offsets

It is the intent of the Commission that all applications filed by any person to construct major new, modified or reconstructed stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the preconstruction review procedures and conditions of the Clean Air Act Amendments of 1977 and this regulation.

These conditions are designed to insure that the major new, modified or reconstructed source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from

existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

1.02. Bubble Concept

It is the intent of the Commission to extend to the owners or operators of existing sources of air pollutants the option of proposing alternative emission reduction plans employing a more economically efficient mix of control technology.

This alternative emission reduction concept, called the "Bubble Concept", permits the owners or operators of sources to place a greater burden of control on facilities where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be, and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or delay compliance with the applicable regulations, or any requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, or the Federal Clean

Air Act, as amended, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

Section 2.       Definitions

- 2.01.       "Actual Emissions", shall mean the actual rate of emissions of a pollutant from an emissions unit using the units actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which time period shall be a two year period unless a determination is made by the Director that a different time period is more representative of normal source operation. For any emissions unit which has not begun normal operations, actual emissions equal the potential to emit of the unit on the date of filing of the application to construct.
- 2.02.       "Allowable Emissions", shall mean the emissions rate calculated using the maximum rated capacity of the source and the most stringent of the following:
- (a) The applicable regulations for such source;
- or,
- (b) The emissions rate specified as a permit condition.
- 2.03.       "Applicable Regulations", shall mean the West Virginia Administrative Regulations of the Air Pol-

lution Control Commission as promulgated pursuant to Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended.

- 2.04. "Applicant", shall mean any person who makes application to this Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of these regulations.
- 2.05. "Air Pollutants", shall mean solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.
- 2.06. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:
- Region I - made up of the counties of Brooke, Hancock, Marshall and Ohio;
  - Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;
  - Region III - made up of the counties of Cabell, Mason and Wayne;
  - Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;
  - Region V - made up of the counties of Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;

Region X - made up of the counties of Berkeley, Jefferson and Morgan.

2.07. "Baseline", shall mean the limitation of emissions of a source, as determined by the applicable regulations in effect at the time the application to construct or modify a source is filed and is more fully defined in Section 7 herein.

2.08. "Begin Actual Construction", shall mean, in

general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities which mark the initiation of the change.

2.09. "Commission", shall mean the West Virginia Air Pollution Control Commission.

2.10. "Commence", shall mean as applied to construction of a major stationary source or major modification that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

2.11. "Construction", shall mean any physical change or

change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

- 2.12. "Director", shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.13. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are well defined and quantifiable and result from activities related to such source or facility.
- 2.14. "Facility", shall mean an identifiable piece of process equipment. A stationary source is composed of one or more pollutant emitting facilities.
- 2.15. "Fixed Capital Cost", shall mean the capital needed to provide all the depreciable components.
- 2.16. "Fugitive Emissions", shall mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- 2.17. "Intrapollutant Emission Offsets", shall mean that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub>

reductions or coke plant particulate matter may not be offset against boiler fly ash).

2.18. "Intrasource Pollutants", shall mean air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.

2.19. "Lowest Achievable Emission Rate (LAER)", shall mean, for any source, that rate of emissions based on the following, whichever is more stringent:

(a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a new, modified, or reconstructed facility, means the lowest achievable emission rate for such facility within the source. In no event shall the application of this term permit a proposed new, modified, or reconstructed facility to emit any pollutant in excess of the amount allowable under applicable new source standards of

performance.

2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation by the Commission. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material

by a stationary source which:

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or CFR 51.24; or

(2) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(g) Any change in ownership at a stationary source.

2.21. "Major Stationary Source", shall mean:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation by the Commission; or

(b) Any physical change that would occur at a

stationary source not qualifying under paragraph 2.21 (a) as a major stationary source if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

2.22. "National Ambient Air Quality Standard (NAAQS)", shall mean the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.23. "Necessary Pre-construction Approvals or Permits", shall mean those permits or approvals required by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder.

2.24. "Net Emissions Increase", shall mean the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences, and

(b) The date that the increase from the particular change occurs.

(2) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

(3) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(4) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is judicially enforceable at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing

any permit under this regulation; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(5) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

2.25. "Nonattainment Area", shall mean for the purpose of this regulation, those areas designated by the Commission as not having attained National Ambient Air Quality Standards for specific air pollutants.

2.26. "Offset", and "emission offset", shall mean an emission reduction of a given pollutant achieved at an existing source (or facility within such source) that allows for the emission of such given pollutant at a different proposed source (or facility within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility within such source), is greater, on a

pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source(s) including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for the emission of such given pollutant at a different facility within the same existing source.

2.27. "Person", shall mean any and all persons, natural or artificial, including the State of West Virginia or any other state, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

2.28. "Potential to Emit", shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of

operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is approved and enforceable by the Commission. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality "NAAQS".

2.30. "Reconstruction", shall mean the replacement of components of an existing stationary source to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new stationary source. In addition, any determination shall also be considered in accordance with 40 CFR 60.15 (f) (1-3). A reconstructed stationary source will be treated as a new stationary source for purposes of this regulation. In determining LAER for a reconstructed stationary source, the provisions of 40 CFR 60.15 (f) (4) shall be taken into

account in assessing whether a new source performance standard is applicable to such stationary source.

2.31. "Resource Recovery Facility" shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this regulation.

2.32. "Secondary Emissions", shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, or reconstruction, but do not come from the source itself.

Secondary emissions may include, but are not limited to:

(a) Emissions from vessels or trains coming to or from a refinery, terminal facility, etc.

(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a major source, modification or relocation.

2.33. "Significant", shall mean, in reference to a

net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants:

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

2.34. "Source", shall mean any structure, building, facility, equipment, or installation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

2.35. "Temporary Source", and "sources of temporary emissions", shall mean for a source located in a nonattainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section

2, of the Code of West Virginia, 1931, as amended.

Section 3. Applicability

- 3.01. This regulation shall apply to all major stationary sources intending to locate in a designated nonattainment area and to all major modifications or reconstruction to any existing sources located in designated nonattainment areas. This regulation shall also apply to all proposed major stationary sources and to all major modifications or reconstruction to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area.
- 3.02. The determination under this regulation of whether such a source will cause or significantly contribute to a violation of a NAAQS will be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.
- 3.03. This regulation shall not apply to sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, resource recovery facilities utilizing municipal solid waste to provide more than 50 percent of the

heat input for generating steam or electricity. However, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

Section 4. Conditions for a Permit Approval for Proposed Major Sources That Would Contribute to a Violation of a NAAQS

4.01. (a) Upon determination by the Director that the emissions from a proposed new major source or major source modification, or reconstruction, located within a nonattainment area, or located elsewhere and having a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if such source agrees within its permit application and permit, to meet the following conditions:

(1) The proposed source, modification or reconstruction is required to meet the lowest achievable emission rate (LAER) for such sources;

(2) The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia

are in compliance with all applicable emission limitations and standards of the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or any rule or regulation promulgated thereunder, or is in compliance with a compliance program which is judicially enforceable or contained in a court decree;

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new source, modification or reconstruction, (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets are acceptable;

(4) The emission offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of Sub-Section 4.01 (a) (3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible,

the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

Section 5.        Conditions for Permit Approval for Sources  
                  Locating in Attainment or Unclassifiable Areas  
                  That Would Cause a New Violation of a NAAQS

5.01.        Upon determination by the Director that the emissions from a proposed new major source, or major modification, or reconstruction locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the new source agrees within its permit application and permit to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapollutant emission offsets are acceptable.

Section 6.        Exemption from Certain Conditions

6.01. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (a) (3) and (4), and Section 5.01:

(1) Resource recovery facilities burning municipal solid waste; and

(2) Sources which must switch fuels:

(i) due to lack of adequate fuel supplies; or

(ii) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (a) (3) and (4) and Section 5.01, and that such efforts were unsuccessful; and

(2) The applicant has secured all available emission offsets; and

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely



roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

- 7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.
- 7.03. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.
- 7.04. (a) The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time the new source application is filed.
- (b) No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date the new

source application is filed.

(c) No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.05. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be agreed to in the permit application and embodied in the permit.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down

or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

- 7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1, 1, 1-Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

Section 8. Location of Offsetting Emissions

- 8.01. Offsets shall be obtained from sources located as close to the proposed new, modified or reconstructed source site as possible.
- 8.02. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed new, modified or reconstructed source provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new, modified or reconstructed source location;

(2) Emission offsets for sources of sulfur dioxide (SO<sub>2</sub>), and total suspended particulate (TSP), should be obtained from an existing facility on the same premises or in the immediate vicinity of the new or modified source.

(b) If such allowance is granted, as provided for in Sub-Section (a), of this Section, the Commission should increase the ratio of the required offsets for such a source.

(c) In order to ensure that the emission offsets will provide a positive net air quality benefit, the Director may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO<sub>2</sub>) and total suspended particulate (TSP), the source's allowable

emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality benefit. It may, however, be assumed that if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height, the air quality test of Sub-Section 4.01 (a) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

(3) (a) Sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a

nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A VOC source may be exempt from these requirements if the source owner can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO<sub>x</sub> to form additional ozone.

Section 9. Administrative Procedures for Emission Offset Proposals

9.01. Emission offsets may be proposed either by the owner of the proposed major new, modified or reconstructed sources or by the local community or the State.

(a) The emission offsets committed to must be accomplished by the said source's start-up date, except when such major new, modified or reconstructed source is a replacement for a source that is being shut down in order to provide the necessary benefits; in such cases the Director may allow up to 180 days for shakedown of the new source before the existing source is required to cease operation. Such allowances must be requested by the applicant and contained, if

granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major new, modified or reconstructed source located in West Virginia, the offsets committed to must be embodied in a State Implementation Plan revision in the neighboring State and must be judicially enforceable by both States and the U. S. Environmental Protection Agency in accordance with the Clean Air Act, as amended, August 7, 1977.

9.02. (a) Such source may propose emission offsets which involve:

(1) Reductions from sources controlled by the source owner (or by persons under common control); and/or

(2) Reductions from neighboring sources not controlled by the applicant.

(b) A state or local community which desires that such major new, modified or reconstructed source locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such major new, modified or reconstructed source.

9.03. Any emission offset proposal described in Section

9.02 (a) (2) above must be embodied either in the applicant's permit application and permit or in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the US EPA for inclusion in the State Implementation Plan.

Section 10. Banking of Emission Offset Credit

10.01. Major new, modified, or reconstructed sources obtaining permits after January 16, 1979, by applying offsets that exceed the requirements herein are permitted to save ("bank") such offset credit for up to two (2) years to provide offsets for a source seeking a permit in the future under the requirements of this regulation.

10.02. (a) The owner of an existing source that permanently reduces emissions by shutdown or curtailment is permitted to bank any resulting reductions beyond baseline emissions for use in accordance with this regulation.

(b) These banked reductions or offsets may only be used as offset credit by the applicant in a subsequent application filed within a period of two (2) years from the date of said permanent shutdown or permanent curtailment, notwithstanding

the provisions of Sub-Section 7.05 (c). Such offsets shall be identified in the construction permit application.

10.03. Emission reductions not banked or which are not used as offset credit within the specified time will be credited to the State for use or disposal by the Commission at its sole discretion.

10.04. To preserve banked emission offsets, the owner thereof shall notify the Director in writing within sixty (60) days of any such permanent shutdown or permanent curtailment, and the Director shall record the emission offsets in a registry and identify the person that has the right to use, transfer, or allocate the banked emission offsets and shall record any transfers of such banked emission offsets after written notice thereof.

Section 11. Control of Fugitive Emissions

Fugitive emissions associated with major new, modified or reconstructed sources subject to this regulation shall not be excluded from the provisions of this regulation.

Section 12. Offsetting of Secondary Emissions

12.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the applying major source is subject to this

regulation for emission of that same pollutant.

12.02. For the purposes of this regulation, secondary emissions must be shown as specific and well-defined, must be quantifiable, and must impact the nonattainment area as the major source which causes the secondary emissions.

12.03. Secondary emissions shall not be considered in determining whether the significant levels in Section 2.33 would be exceeded.

12.04. (a) For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02 (d).

(2) For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

(b) If the proposed source owner and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the source

owner has the burden of proving it is correct by performing the necessary modeling.

Section 13. Bubble Concept for Intrasource Pollutants

- 13.01. The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of control technology than that mandated by existing or proposed regulations.
- 13.02. It is the responsibility of the owner or operator of the source to develop its specific bubble concept design. The owner or operator also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards.
- 13.03. The Commission shall not approve any bubble concept design without first giving due notice and holding a public hearing, on a case-by-case basis. Such approved bubble concept design shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code.

13.04. An approved bubble concept design shall be in effect for any source for a period of no more than three years from the date of issuance. At the end of such three-year period, the Commission shall review the bubble concept design for such source and may either terminate or extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate.

Section 14. Discretionary Decisions Made by the Director

Any discretionary decision made by the Director as provided herein may be appealed to the Commission for review by petition. Such review shall be discretionary with the Commission.

Section 15. Conflict with Other Rules or Regulations

When a provision of this regulation conflicts with a similar portion(s) of any rule or regulation previously adopted by the Commission, the provision(s) of this regulation shall apply.

Section 16. Effective Date

Regulation XIX-A shall become effective



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
CHARLESTON 25305

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE  
THIS DATE 6/11/82

A. JAMES MANCHIN  
SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
Title or Position

WV Air Pollution Control Commission, hereby submit to record in  
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- ( ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ( ) proposed rules and regulations superseding rules and regulations already on file;
- (x) notice of hearing; 1-Weirton Steel "Bubble Consent Order  
2-Mountaineer Carbon Consent Order
- ( ) findings and determinations;
- ( ) rules and regulations; or
- (x) other - specify ( Notice of Air Pollution Control Commission  
Commission Meeting - (Agenda attached)

This filing pertains to

Chapter 16  
Article 20  
Series \_\_\_\_\_  
Section \_\_\_\_\_  
Page No. \_\_\_\_\_

- ( ) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- ( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;

June 11, 1982

Date Submitted

Carl G. Beard, II  
Signature of Person Authorizing  
this Filing Secretary



WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION  
1558 Washington Street, East  
CHARLESTON, WEST VIRGINIA 25311  
TELEPHONE: 348-2275 OR 348-3286

AGENDA  
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION  
1558 Washington Street, East, Charleston, West Virginia  
Conference Room  
July 2, 1982  
9:15 a.m.

I. PUBLIC HEARINGS

1. Hearing to consider proposed Weirton Steel "Bubble" Consent Order
2. Hearing to consider proposed Mountaineer Carbon Consent Order

II. COMMISSION MEETING

1. Director's Report
2. Consideration of petition filed by Mrs. Virginia Padgett of Gassaway, West Virginia, concerning a relocation permit approved by the Director
3. Report and discussion of Diamond Shamrock chlorine accident
4. Election of Chairman, Vice-Chairman, and appointment of Secretary
5. Comments



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
 Title or Position

Air Pollution Control Commission, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- ( ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ( ) proposed rules and regulations superseding rules and regulations already on file;
- ( ) notice of hearing;
- ( ) findings and determinations;
- ( ) rules and regulations; or
- (x) other - specify (

Correction of typographical error - the word "constituent" on the second line of Page 13 should have been the word "characteristic". Enclosed <sup>is a</sup> corrected page.

This filing pertains to

Chapter 16 ) 20  
 Article 20 ) and 5E  
 ries XXV  
 Section 4.02.(f)(1)  
 Page No. 13

FILED IN THE OFFICE OF  
 A. JAMES MANCHIN  
 SECRETARY OF STATE  
 THIS DATE 5/7/82  
 Administrative Law Division

- ( ) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- ( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;

May 7, 1982  
 Date Submitted

Carl G. Beard II  
 Signature of Person Authorizing  
 this Filing Secretary

MANCHIN  
 SECRETARY OF STATE

listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(i) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(ii) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(iii) The waste is typically and frequently managed in non-oxidizing environments,

(2) Specific wastes which meet the standard in Subsection 4.02, paragraphs (f)(1)(i), (ii) and (iii), (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

(i) Chrome (blue) trimmings and shavings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan, wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling; and

(ii) Buffing dust generated by the following subcategories of the leather tanning and finishing industry;

FILED IN THE OFFICE  
A. JAMES MANC  
SECRETARY OF STATE  
THIS DATE 5/7/82  
Administrative Law

hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and

(iii) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling; and

(iv) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling; and

(v) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries; and

(vi) Wastewater treatment sludges from the production of  $TiO_2$  pigment using chromium bearing ores by the chloride process; or

(g) Waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore; or

(h) Cement kiln dust waste; or

(i) Waste which consists of discarded wood or wood

products which fail the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for the materials intended end use.

Section 5. Exemptions

5.01. Hazardous wastes generated in the following units are exempt from this regulation until they exit the units in which they were generated, unless the units are surface impoundments, or unless the hazardous wastes remain in the units more than ninety (90) days after the units cease to be operated for manufacturing, or for storage or transportation of the product or raw materials:

- (a) A product or raw material storage tank; or
- (b) A product or raw material transport vehicle or vessel; or
- (c) A product or raw material pipeline; or
- (d) A manufacturing process unit or an associated non-waste treatment manufacturing unit.

5.02. (a) Except as provided in Subsection 5.02(b) , a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to the requirements of these regulations when:

- (1) The sample is being transported to a

laboratory for the purpose of testing; or

(2) The sample is being transported back to the sample collector after testing; or

(3) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(4) The sample is being stored in a laboratory before testing; or

(5) The sample is being stored in a laboratory after testing, but before it is returned to the sample collector; or

(6) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case of enforcement action where further testing of the sample may be necessary).

(b) In order to qualify for the exemption in Subsection 5.02(a), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(1) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS) or any other applicable shipping requirements; or

(2) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of

the sample:

(i) Assure that the following information accompanies the sample:

(a) The sample collector's name, mailing address, and telephone number; and

(b) The laboratory's name, mailing address, and telephone number; and

(c) The quantity of the sample; and

(d) The date of shipment; and

(e) A description of the sample; and

(ii) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection 5.02(a).

5.03. A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month. Except for those wastes identified in Subsections 5.03(c) and 5.03(d), a small quantity generator's hazardous wastes are not subject to this regulation, provided the generator complies with the requirements of 3.01.04(g) of the DNR Regulations.

(a) Hazardous waste that is beneficially used or reused or legitimately recycled or reclaimed and that is excluded from regulation by Subsection 5.04(a) is not

included in the quantity determinations of this subsection, and is not subject to these regulations. Hazardous waste that is subject to the special requirements of Subsection 5.04(b) is included in the quantity determinations of this subsection and is subject to the requirements of this subsection.

(b) In determining the quantity of hazardous waste a person generates, a generator need not include:

(1) His hazardous waste when it is removed from on-site storage; or

(2) Hazardous waste produced by on-site treatment of his hazardous waste.

(c) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are fully subject to these regulations:

(1) A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in 3.04.04(e) of the DNR Regulations, and off-specification commercial products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in 3.04.04(e) of the DNR Regulations; or

(2) A total of 100 kilograms of any residue or contaminated soil, water, or other debris resulting

from the clean-up of a spill, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in 3.04.04(e) of the DNR Regulations, or any residue or contaminated soil, water, or other debris resulting from the clean-up of a spill, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which if they met specifications, would have the generic names listed in 3.04.04(e) of the DNR Regulations.

(d) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than those set forth in Subsection 5.03(c)(1) or 5.03(c)(2), all of those accumulated wastes for which the accumulation limit was exceeded are fully subject to this regulation. The time period specified in Section 6.03.05 of the DNR Regulations for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(e) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity

limitations identified in this section, unless the mixture meets any of the characteristics of hazardous wastes identified in Section 6.

(f) If a small quantity generator mixes a waste with a hazardous waste that exceeds a quantity exclusion level of this subsection, the mixture is subject to full regulation.

5.04. The following requirements apply to hazardous waste which is used, reused, recycled, or reclaimed:

(a) Except as otherwise provided in Subsection 5.04 (b), a hazardous waste which meets any of the following criteria is not subject to the requirements of these regulations:

(1) It is beneficially used or reused or legitimately recycled or reclaimed; or

(2) It is being accumulated, stored, or physically, chemically, or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation; or

(b) A hazardous waste which is sludge, or which is listed in Section 7, or which contains one or more hazardous wastes listed in Section 7, and which is transported or stored prior to being used, reused, recycled, or reclaimed is subject to the requirements of Section 9.

- 5.05. If the Director determines, after an examination of the waste analysis included with Part B of the permit application, that the waste to be burned is either:
- (a) Listed as a hazardous waste in Section 7 only because it is ignitable (Hazard Code I); or
  - (b) That the waste has been tested against the characteristics of hazardous waste under Section 6, and that it meets only the ignitability characteristic; and that the waste analysis included with Part B of the permit application shows no detectable concentration of the hazardous constituents listed in Appendix VIII of the DNR Regulations, then the Director may, in establishing permit conditions, exempt the applicant from all requirements of this regulation except waste analysis (Sub-section 11.03) and closure (Section 26).
- 5.06. The owner or operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, such pathological waste incinerator must be designed, constructed, and operated to meet all other applicable regulations promulgated by the Commission including, but not limited to, Regulation VI and XIII.
- 5.07. The requirements of this regulation do not apply to:

(a) A farmer disposing of waste pesticides from his own use; or

(b) Persons with respect to those activities which are carried out to immediately contain or treat a spill of hazardous waste or material which, when spilled, becomes a hazardous waste, except that, with respect to such activities, the appropriate requirements of Subsections 8.03 and 8.04 of the DNR Regulations are applicable to owners and operators of treatment, storage, and disposal facilities otherwise subject to this regulation. After the immediate response activities are completed, the applicable provisions of this regulation apply fully to the management of any spill residue or debris which is a hazardous waste under Section 7.

Section 6. Characteristics of Hazardous Waste

6.01. A hazardous waste which is identified by a characteristic in this section, but is not listed as a hazardous waste in Section 7, is assigned the EPA Hazardous Waste Number set forth by the respective characteristic in this section. This number shall be used for complying with the recordkeeping and reporting requirements of this regulation.

6.02. For purposes of this section, the Director will consider a sample obtained using any applicable sampling method specified in Appendix I of the DNR Regulations

to be a representative sample.

6.03. A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flashpoint less than 60°C (140°F), using the test method specified in ASTM Standard D-93-79 or D-93-80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, or as determined by an equivalent test method approved by the EPA Administrator; or

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard; or

(c) It is an ignitable compressed gas as defined in 49 CFR 173.300, as amended December 1, 1980, and as determined by the test methods described in that regulation or equivalent test methods approved by the EPA Administrator; or

(d) It is an oxidizer as defined in 49 CFR 173.151 and as amended as of December 1, 1980.

A solid waste that exhibits the characteristics

of ignitability, but is not listed as a hazardous waste by the DNR Director, has the EPA Hazardous Waste Number of D001.

6.04. A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified as 5.2 in EPA's "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods", as amended July 7, 1981, or an equivalent test method approved by the EPA Administrator; or

(b) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 as standardized in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods", or an equivalent test method approved by the EPA Administrator.

A solid waste that exhibits the characteristics of corrosivity, but is not listed as a hazardous waste by the DNR Director, has the EPA Hazardous Waste Number of D002.

6.05. A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(a) It is normally unstable and readily undergoes violent change without detonating; or

(b) It reacts violently with water; or

(c) It forms potentially explosive mixtures with water; or

(d) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment; or

(e) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment; or

(f) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement; or

(g) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure; or

(h) It is a forbidden explosive as defined in 49 CFR 173.51, amended as of December 1, 1980, or a Class A explosive as defined in 49 CFR 173.53, amended as of

December 1, 1980, or a Class B explosive as defined in 49 CFR 173.88, amended as of December 1, 1980.

A solid waste that exhibits the characteristic of reactivity but is not listed as a hazardous waste by the DNR Director, has the EPA Hazardous Waste Number of D003.

6.06. A solid waste exhibits the characteristic of EP Toxicity if, using the test methods listed in Appendix II of the DNR Regulations or equivalent methods approved by the EPA Administrator, the extract from a representative sample of the waste contains any of the contaminants listed in 3.03.05, Table 1, of the DNR Regulations at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this subsection.

A solid waste that exhibits the characteristic of EP Toxicity, but is not listed as a hazardous waste by the DNR Director has the EPA Hazardous Waste Number specified in 3.03.05, Table 1, of the DNR Regulations, which corresponds to the toxic contaminant causing it to be hazardous.

Section 7. Lists of Hazardous Wastes

7.01. A waste is a hazardous waste if it is listed in Subsection 3.04.02 or 3.04.03 of the DNR Regulations,

unless it has been excluded by the DNR Director from this list under 40 CFR 260.20 and 260.22.

7.02. The DNR Director will indicate his basis for listing the classes or types of wastes listed in this section by employing one or more of the following Hazard Codes:

Ignitable Waste.....(I)  
Corrosive Waste.....(C)  
Reactive Waste.....(R)  
EP Toxic Waste.....(E)  
Acute Hazardous Waste.....(H)  
Toxic Waste.....(T)

Appendix VII of the DNR Regulations identifies the constituent which caused the DNR Director to list the waste as an EP Toxic Waste (E) or Toxic Waste (T) in Subsections 3.04.02 or 3.04.03 of the DNR Regulations.

7.03. Each hazardous waste listed in this section is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number must be used in complying with the recordkeeping and reporting requirements of this regulation.

7.04. The hazardous wastes listed in Subsections 3.04.02 or 3.04.03 of the DNR Regulations are subject to the exclusion limits for acutely hazardous wastes established in Subsection 5.03.

7.05. In addition to those hazardous wastes listed in Subsections 3.04.02 or 3.04.03 of the DNR Regulations, the following materials or items are hazardous wastes if

and when they are discarded or intended to be discarded:

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in Subsections 7.05(e) or 7.05(f); or

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Subsections 7.05(e) or 7.05(f); or

(c) Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsection 7.05(e). (Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported, or treated prior to such use, reuse, recycling, or reclamation, such residue shall be considered to be intended for discard, and thus a hazardous waste. An example of a legitimate reuse of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue); or

(d) Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in Subsections 7.05(e) or 7.05(f), or any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, or any off-specification chemical product and manufacturing chemical intermediate which, if it met specification, would have the generic name listed in Subsections 7.04(e) or 7.05(f). The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in . . . . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in Subsections 7.05(e) or 7.05(f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in Subsections 7.05(e) or 7.05(f), such waste will

be listed in either Subsections 3.04.02 or 3.04.03 of the DNR Regulations, or will be identified as a hazardous waste by the characteristics set forth in Section 6; or

(e) The commercial chemical products, manufacturing chemical intermediates, off-specification commercial chemical products, or manufacturing chemical intermediates referred to in Subsections 7.04(a) through (d), are identified as acute hazardous waste (H) and are subject to the small quantity exclusion defined in Subsection 5.03. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Subsection 3.04.04(e) of the DNR Regulations. The primary hazardous properties of these materials have been indicated by the letter T (Toxicity), and R (Reactivity). Absence of a letter indicates that the compound only is listed for acute toxicity; or

(f) The commercial chemical products, manufacturing chemical intermediates, or off-specification commercial chemical products referred to in Subsections 7.05(c) through (d), are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in Subsection 5.03. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Subsection 3.04.04(f) of the DNR Regulations. The primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity),

I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is listed only for toxicity.

Section 8. Performance Standards for Thermal Treatment

8.01. An incinerator burning hazardous waste must be designed, constructed, and maintained so that, when operated in accordance with operating requirements specified under Section 10, it will meet the following performance standards:

(a) An incinerator burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99 percent for each principal organic hazardous constituent (POHC) designated under Section 10 in its operating permit for each waste feed. DRE is determined for each POHC from the following equation:

$$DRE = \frac{(W_{in} - W_{out})}{W_{in}} \times 100\%$$

Where:

$W_{in}$  = Mass feed rate of one principal organic hazardous waste constituent (POHC) in the waste stream feeding the incinerator, and

$W_{out}$  = Mass emission rate of the same POHC present in exhaust emissions prior to release to the atmosphere.

One or more POHCs will be specified in the facility's permit from among those constituents listed in Appendix VIII of the DNR Regulations for each waste feed to be burned. This specification will be based on the degree of difficulty of incineration of the organic constituents in the waste and on their concentration or mass analysis and trial burns or alternative data submitted with Part B of the facility's permit application. Organic constituents which represent the greatest degree of difficulty of incineration will be those most likely to be designated as POHCs if they are present in large quantities or concentrations in the waste. Trial POHCs will be designated for performance of trial burns in accordance with the procedure specified in Section 20.

(b) Incinerators burning hazardous waste must destroy hazardous waste combustion by-products so that the total mass emission rate of these by-products emitted from the stack is no more than 0.01 percent of the total mass feed rate of the POHCs fed into the incinerator.

For each waste feed to be burned, one or more hazardous combustion by-products will be specified from among those constituents listed in Appendix VIII of the DNR Regulations. This specification will be based on the degree of difficulty of incineration of the organic constituents of the waste feed and the waste feed combustion by-products, the by-products

concentration or mass, considering the results of waste analyses and trial burns or alternative data submitted with Part B of the facility's permit application. Combustion by-products which represent the greatest degree of difficulty of incineration will be those most likely to be designated as a hazardous combustion by-products. Constituents are more likely to be designated as hazardous combustion by-products if they are present in large quantities or concentrations. Trial hazardous combustion by-products may be designated for performance of trial burns in accordance with the procedure specified in Section 20.

(c) After consideration of the factors listed in Subsection 8.01(g), the Commission may, on a case-by-case basis, establish performance standards which are either more or less stringent than those required by Subsections 8.01(a) and 8.01(b) based on a finding that:

(1) More stringent standards are necessary because the emission rates achieved by the application of the performance standards otherwise required by this subsection may pose an unacceptable risk to human health and the environment, or

(2) Less stringent standards will achieve emission rates which do not pose an unacceptable risk to human health and the environment.

(d) An incinerator burning hazardous waste containing more than 0.5 percent chlorine must remove 99 percent of the hydrogen chloride from the exhaust gas.

(e) An incinerator burning hazardous waste must not emit particulate matter exceeding 180 milligrams per dry standard meter (0.08 grains per dry standard cubic foot) when corrected for 12 percent CO<sub>2</sub>, using the procedures presented in the Clean Air Act regulations "Standards of Performance for Incinerators", 40 CFR 60.50, Subpart E.

(f) After consideration of the factors listed in Subsection 8.01(g), the Commission may, on a case-by-case basis, stipulate performance standards for metals, hydrogen halides, and elemental halogens, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment.

(g) The findings under Subsections 8.01(c) and 8.01(f) will be made after evaluating the following data which the Director may require from the permit applicant:

(1) Emissions of POHCs, hazardous combustion by-products, metals, and hydrogen halides, including:

(i) Mass emission rates from the stack,  
and

(ii) Concentration in the gas stream

exiting the stack; and

(2) Air dispersion estimates for those substances, including:

- (i) Meteorological data, and
- (ii) Description of the air dispersion models, and
- (iii) Assumptions underlying the air dispersion models used; and

(3) Expected human and environmental exposure, including:

- (i) Topographic considerations,
- (ii) Population distributions,
- (iii) Population activities, and
- (iv) Modes, intensity, and duration of exposure; and

(4) Consequences of exposure including:

- (i) Dose-response curves for carcinogens,
- (ii) Health effects based on human or animal studies for other toxic constituents,
- (iii) Potential for accumulation of toxic constituents in the human body, and
- (iv) Statements of expected risk to individuals or populations.

(h) For purposes of permit enforcement, compliance with the operating requirements specified in the permit

(Section 10) will be regarded as compliance with this section. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the performance requirements of this section may be "information" justifying modification, revocation, or reissuance of a permit under Section 23 of this regulation.

8.02. Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot be safely disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must receive prior written approval from the Director and must do so in accordance with the following table and in a manner that does not threaten human health, safety, or the environment.

Pounds of Waste Explosives or Propellants	Minimum Distance From Open Burning or Detona- tion to the Property of Others
0 to 100	204 meters (670 feet)
101 to 1,000	380 meters (1,250 feet)
1,001 to 10,000	530 meters (1,730 feet)
10,001 to 30,000	690 meters (2,260 feet)

Section 9. Facility Requirements

9.01. All hazardous waste treatment, storage, and disposal facilities must be designed, constructed, maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

9.02. Facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must take precautions to prevent reactions which:

(a) Produce uncontrolled toxic, mists, fumes, dust, or gases in sufficient quantities to threaten human health or the environment, and

(b) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

9.03. All hazardous waste tanks must have treatment process controls, emission controls, and safety or emergency procedures as are necessary to protect human health and the environment from toxic or otherwise harmful fumes, mists, or gases resulting from:

(a) Volatilization of wastes stored or treated in the tank; and

(b) Chemical reactions in the tank, either routine

or resulting from process upsets; and

(c) Physical agitation or other forms of treatment in the tank.

9.04. Tanks used to treat or store hazardous waste containing liquid waste whose true vapor pressure is greater than 10.5 kilo Pascals (1.52 psia) at 25°C and 760 mmHg shall be equipped with an emission control system described as follows:

(a) Storage or treatment in open (uncovered) tanks is prohibited.

(b) External floating roofs shall be equipped with double mechanical seals.

(c) Fixed roof tanks shall be equipped with an internal floating roof with appropriate seals; or

(d) Fixed roof tanks shall be equipped with a vapor recovery system approved by the Director; or

(e) Fixed roof tanks shall be equipped with an equally effective alternative control system approved by the Director.

9.05. Emissions of hazardous waste whose true vapor pressure is greater than 10.5 kilo Pascals (1.52 psia) at 25°C, 760 mmHg shall be prevented during loading or unloading of tank trucks, railroad tank cars, and barges as follows:

(a) Venting all displaced vapors and gases to a

vapor recovery system or an alternative control system approved by the Director; and

(b) Providing a means to prevent liquid drainage from the loading (unloading) device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

(c) Equipping all loading and vapor lines with fittings which make vapor tight connections which close automatically when disconnected.

9.06. A hazardous waste pile must be designed to prevent dispersal of the waste by wind.

9.07. Hazardous waste landfills must be covered or otherwise managed to control the wind dispersal of the waste.

9.08. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

(a) The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal; and

(b) The existing quality of the air, including other sources of contamination and their cumulative impact

on the air; and

(c) The potential for health risks caused by human exposure to waste constituents; and

(d) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(e) The potential for interference with the enjoyment of life or property; and

(f) The persistence and permanence of such potential adverse effects.

9.09. Owners or operators which generate or transport hazardous waste shall utilize best available control technology to limit the discharge of hazardous waste constituents to the atmosphere during:

(a) Process turn-arounds;

(b) Cleaning of process equipment;

(c) Planned process shutdowns; and

(d) Tank truck, railroad tank car, and barge

cleaning.

Section 10. Operating Requirements

10.01. A thermal treatment facility must be operated in accordance with operating requirements specified in the construction permit, and for incinerators, in the operating permit. Certain operating requirements will be specified on a case-by-case basis as determined by a trial

burn or by alternative data as specified in Section 17 and submitted with Part B of a facility's permit application).

10.02. Each set of operating requirements contained in the applicable permits for hazardous waste thermal treatment facilities shall specify the composition of the hazardous waste feed (including acceptable variations in the physical or chemical properties of the waste feed) and which, for incinerators, will not affect compliance with the performance requirements of Section 8 to which the operating requirements apply. For each such waste feed, such permit shall specify, where applicable, acceptable operating limits including the following conditions:

(a) Carbon monoxide (CO) level in the stack exhaust gas;

(b) Waste feed rate;

(c) Combustion temperature;

(d) Air feed rate to the combustion system;

(e) Allowable variations in treatment system design or operating procedures; and

(f) Such other operating requirements as are necessary to ensure that the standards, requirements, terms, and conditions of this regulation are met.

10.03. During start-up and shut-down of a thermal treatment

unit, hazardous waste (except ignitable waste exempted in accordance with Subsection 5.05) must not be fed to the thermal treatment unit unless the unit is operating within steady-state conditions of operation (temperature, air feed rate, etc.) or, if a permit is required as specified in the permit. Noncontinuous (batch) thermal treatment units which require a complete thermal cycle to treat a discrete quantity of hazardous waste are exempt from this subsection.

10.04. A thermal treatment unit must be operated with a functioning system to automatically cut off waste feed to the thermal treatment unit when operating conditions deviate from steady-state or, if a permit is required, from such permit conditions.

10.05. For thermal treatment facilities for which operating permits are required, the permittee may treat only hazardous wastes specified in the permit and only under operating conditions specified in the permit except:

- (a) In approved trial burns under Section 20; or
- (b) Under exemptions pursuant to Subsection 5.05.

10.06. Hazardous wastes other than those specified in a permit may be thermally treated only after operating conditions have been specified in a new permit or a permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or

alternative data included with Part B of the permit application under Section 17.

10.07. Fugitive emissions from the combustion zone of hazardous waste incinerators must be prevented by:

(a) Keeping the combustion zone totally sealed against fugitive emissions; or

(b) Maintaining a combustion zone pressure lower than atmospheric pressure; or

(c) An alternate means of control demonstrated (with Part B of the permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.

Section 11. Monitoring and Inspections

11.01. The complete thermal treatment process and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions. All emergency waste feed cut-off controls and system alarms must be checked daily to verify proper operation.

11.02. The owner or operator must conduct, as a minimum, the following monitoring when thermally treating hazardous waste:

(a) For existing thermal treatment processes;

(1) Existing instruments which relate to

temperature and emission control (if an emission control device is present) must be monitored at least every fifteen (15) minutes. Appropriate corrections to maintain steady-state or other appropriate thermal treatment conditions must be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, treatment process temperature, and relevant process flow and level controls.

(2) The stack plume (emissions), where present, must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(b) For new, modified, or reconstructed thermal treatment units, other than incinerators, instruments which relate to process or emission control must be monitored as specified in the facility's permit.

(c) For new incinerators:

(1) Combustion temperature, waste feed rate, and air feed rate must be monitored on a continuous basis.

(2) Carbon monoxide (CO) must be monitored on a continuous basis at a point in the incinerator downstream of the combustion zone and prior to release to the atmosphere.

11.03. Throughout normal operation the permittee must conduct sufficient waste analysis to verify that waste feed to the thermal treatment unit is within the physical and chemical composition limits specified in the permit.

11.04. All monitoring and inspection data must be recorded and the records must be placed in the operating log required by Subsection 13.01.

Section 12. Air Emission Monitoring

Upon the request of the Director, the owner or operator of a hazardous waste treatment, storage, or disposal facility from which hazardous waste constituents or hazardous waste decomposition by-products are emitted, or may be emitted, to the air must establish and operate an air monitoring program approved by the Director to measure the effect of the facility on ambient air quality.

Section 13. Recordkeeping for Thermal Treatment Facilities

13.01. The owner or operator of a hazardous waste thermal treatment facility shall maintain a log of operation containing the following information:

(a) Inspection data under Subsection 11.01; and

(b) Monitoring data required under Subsection 11.02;

and

(c) Waste analysis data specified under Subsection 11.03; and

(d) The quantity of waste thermally treated per day.

This information may be recorded in the operating record required pursuant to Subsection 8.05.04 of the DNR Regulations.

13.02. Samples and measures taken for the purpose of monitoring shall be representative of the monitored activity.

13.03. The owner or operator shall retain records of all monitoring information (including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation) and copies of all data used to complete applications for permits for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

13.04. Records of monitoring information shall include:

(a) The date, exact place, and the time of sampling or measurements; and

(b) The individual(s) who performed the sampling or measurements; and

(c) The date(s) analyses were performed; and

(d) The individual(s) who performed the analyses;

and

(e) The analytical techniques or methods used;

and

(f) The results of such analyses.

Section 14. Reports and Testing

14.01. At such reasonable time as the Director may designate, the operator of any thermal treatment facility shall be required to conduct or have conducted stack tests to determine the emissions in exhaust gases when the Director has reason to believe that the stack emission limitations specified in the permit are being violated or for compliance testing. Such tests shall be conducted by analytical techniques specified in EPA Document SW-846 and other applicable test methods approved by the EPA Administrator. Test reports shall be filed on forms and in a manner acceptable to the Director. The Director, or his duly authorized representative, may at his option witness or conduct such stack test. Should the Director exercise his option to conduct such tests, the operator will provide all the necessary sampling connections and sampling ports to be located in such a manner as the Director may require, power for test equipment and the required safety equipment such as scaffolding, railings, and ladders to comply with generally accepted good safety practices.

14.02. The Director, or such authorized representative, may

may conduct such tests as he may deem necessary to evaluate hazardous waste emissions other than those noted above.

Section 15. Noncompliance Reporting

15.01. The permittee shall report to the Director all instances of noncompliance as follows:

(a) Failure to complete a construction element.

When the owner has failed to complete, by the date specified in his permit, an element of a compliance schedule involving either planning or construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within forty-five (45) days from the date of a compliance schedule report is due under the permit; or

(b) Whenever the permittee has violated an operating requirement and has not returned to compliance within one (1) working day; or

(c) Significant permit noncompliance or other event(s) such as explosions, and process upsets which result in the discharge of hazardous pollutants to the atmosphere which may endanger health or the environment.

15.02. The permittee shall orally report to the Director all instances of noncompliance described in Subsection 15.01(c) within twenty-four (24) hours of the occurrence. The following information shall be supplied:

(a) Name, address, and telephone number of the owner or operator; and

(b) Name, address, and telephone number of the facility; and

(c) Date, time, and type of incident; and

(d) Name and quantity of material(s) involved; and

(e) The extent of injuries, if any; and

(f) An assessment of actual or potential hazards to the environment and human health; and

(g) Steps taken or planned to correct the noncompliance; and

(h) The anticipated time the incident is expected to continue; and

(i) Estimated quantity and disposition of recovered material that resulted from the incident.

15.03. Within five (5) days of the occurrence the permittee shall submit in writing all information required under Subsection 15.02 including any additional procedures to prevent recurrence of the noncompliance.

Section 16. Modification, Construction, or Renewal Permit  
Applications

16.01. No person shall construct a new hazardous waste treatment or disposal facility which discharges, or may discharge, hazardous waste to the atmosphere prior to submitting Part A and Part B permit applications, as provided in Section 17, and obtaining a construction permit from the Director.

16.02. No person shall modify or reconstruct an existing hazardous waste treatment or disposal facility which discharges, or may discharge, hazardous waste to the atmosphere prior to submitting revised Part A and Part B permit applications and obtaining a modification or reconstruction permit from the Director. The following actions constitute a modification:

(a) When there are material and substantial alterations or additions to the facility or activity which occurs after the effective date of this regulation and which may justify the application of new or different operating requirements; or

(b) If the Director has received information pertaining to circumstances or conditions existing at the time a permit was issued that were not included in the administrative record and would have justified the application of different permit conditions; or

(c) The standards of regulations on which a permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for cause only as follows:

(1) For promulgation of amended standards or regulations, when:

(i) The permit conditions requested to be modified were based on a promulgated hazardous waste regulation, and

(ii) The Commission has revised, withdrawn, or modified that portion of the regulation on which the permit conditions were based, or

(2) For judicial decision, a court of competent jurisdiction has remanded and stayed state regulations, if the remand and stay concern that portion of the regulation on which the permit condition was based and a request is filed by the permittee within ninety (90) days of judicial remand; or

(d) Treatment of hazardous wastes other than those specified in the facility's permit.

16.03. For a new hazardous waste treatment or disposal facility, the permittee may not commence treatment or disposal of hazardous waste; and for a facility being

modified or reconstructed, the permittee may not treat or dispose of hazardous waste in the modified or reconstructed portion of the facility until:

(a) The permittee has submitted to the Director by certified mail or hand delivery, a letter signed by the permittee and an authorized representative stating that the facility has been constructed, reconstructed, or modified in compliance with the permit; and

(b) (1) The Director has inspected the modified, reconstructed, or newly constructed facility and finds it is in compliance with the conditions of the permit, or

(2) Within fifteen (15) days of the date of receipt by the Director of the letter in Subsection 16.03(a) if the permittee has not received notice from the Director of his intent to inspect, prior inspection is waived and the permittee may commence treatment or disposal of hazardous waste.

16.04. All applications for new treatment or disposal facilities must be submitted one hundred-eighty (180) days before physical construction is expected to commence.

16.05. Any treatment or disposal facility with an effective permit shall submit a new application at least one hundred-eighty (180) days before the expiration date of the effective permit.

16.06. For purposes of this regulation, granting of a construction permit shall establish, where applicable, the

basis for issuance of an operating permit.

Section 17. Contents of Part A and B Applications

17.01. The following information shall be submitted in a Part A permit application:

(a) The activities conducted by, or proposed to be conducted by, the applicant which require it to obtain a permit pursuant to this regulation; and

(b) Name, mailing address, and location of the facility for which the application is submitted; and

(c) Up to four (4) SIC codes which best reflect the principal products or services provided by the facility; and

(d) The latitude and longitude of the facility; and

(e) The name, address, and telephone number of the owner of the facility; and

(f) An indication of whether the facility is new or existing and whether it is a first or revised application; and

(g) For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas; and

(h) For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and site of future treatment, storage, and disposal areas; and

(i) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity; and

(j) A listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the State, where appropriate:

(1) Hazardous waste management program under DNR,

(2) Prevention of Significant Deterioration (PSD) program under the West Virginia Air Pollution Control Act or the Federal Clean Air Act,

(3) Non-attainment program under the West Virginia Air Pollution Control Act or the Federal Clean Air Act,

(4) National Emission Standards for Hazardous Pollutants (NESHAPS) pre-construction approval under the West Virginia Air Pollution Control Act or the Federal Clean Air Act, and

(5) Other relevant air pollution control permits including local permits; and

(k) A topographic map (or other map if a topographic map is unavailable) extending at least one-quarter (1/4) mile beyond the property boundaries of the source, depicting the facility and each of the hazardous waste

treatment, storage, or disposal facilities; and

(l) A brief description of the nature of the business; and

(m) A description of the processes used or to be used for treating, storing, and disposing of hazardous waste, and the design capacity of such processes; and

(n) A specification of the hazardous wastes listed or designated under Section 3 to be treated, stored, or disposed at the facility, and an estimate of the quantity of such wastes to be treated, stored, or disposed annually.

(o) The filing of a completed copy of a Part A Application with the Director shall constitute compliance with Subsection 17.01.

17.02. The following information shall be submitted in a Part B permit application:

(a) A general description of the facility; and

(b) Chemical and physical analyses of the hazardous wastes to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known in order to treat, store, or dispose of such wastes properly in accordance with Section 8 and Section 9; and

(c) A copy of the required waste analysis plan required by 8.02.04(b) of the DNR Regulations and, if applicable, 8.02.04(c) of the DNR Regulations; and

(d) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes as required to demonstrate compliance with Subsections 9.01 and 9.02; and

(e) A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be clearly shown on the map. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet). Owners and operators of hazardous waste facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- (1) Map scale and date,
- (2) Surrounding land uses (residential, commercial, agricultural, recreational),
- (3) A wind rose (i.e., prevailing wind speed and direction),
- (4) Orientation of the map (north arrow),
- (5) Legal boundaries of the hazardous waste

management facility site,

(6) Buildings, treatment, storage, or disposal operations; or other structures (recreation areas, access and internal roads, loading and unloading areas, fire control facilities, etc.), and

(7) Location of operational units within the hazardous waste management facility site where hazardous waste is (or will be) treated, stored, or disposed (including equipment cleanup areas).

17.03. In addition to the information submitted under Subsections 17.01 and 17.02, hazardous waste incinerators must fulfill the requirements of Subsections 17.03(a), or 17.03(b), or 17.03(c):

(a) When seeking exception under Subsection 5.05 (ignitable waste only), the applicant must demonstrate that the waste is either:

(1) Listed as a hazardous waste under this regulation only because it is ignitable (Hazard Code I); or,

(2) That the waste has been tested and meets only the ignitability characteristic, and shows no detectable concentrations of the hazardous constituents listed in Appendix VIII of the DNR Regulations; or

(b) Submit results of a trial burn conducted in accordance with Section 20, Trial Burn Permits, including all

the determinations required by that section; or

(c) In lieu of a trial burn, the applicant shall submit the following information:

(1) An analysis of each hazardous waste or mixture of hazardous wastes including:

(i) Heating value of the waste in the form and composition in which it will be burned;

(ii) Viscosity (if applicable), or a description of the physical form of the waste;

(iii) An identification of all hazardous constituents listed in Appendix VIII of the DNR Regulations which are present in the waste to be burned, except that the applicant need not analyze for constituents in Appendix VIII of the DNR Regulations which would not reasonably be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis of their exclusion stated. The waste analysis must rely on analytical techniques specified in EPA Document SW-846 or equivalent techniques approved by the EPA Administrator;

(iv) An appropriate quantification of the hazardous constituents identified in the waste, within the precision produced by analytical methods specified in EPA Document SW-846, "Test Methods for Evaluation of Solid Waste, Physical/Chemical Methods", or equivalent

techniques approved by the EPA Administrator;

(v) A quantification of those hazardous constituents in the waste which may be designated POHCs based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards of this regulation; and

(2) A detailed engineering description of the incinerator including, where applicable:

- (i) Manufacturer's name and model number,
- (ii) Type (i.e. rotary kiln, liquid injection)
- (iii) Linear dimension including cross sectional area of combustion chamber,
- (iv) Description of auxiliary fuel system (type/feed),
- (v) Capacity of prime mover,
- (vi) Description of automatic waste feed cut off system(s),
- (vii) Stack gas monitoring and pollution control monitoring system,
- (viii) Nozzle and burner design,
- (ix) Construction materials,
- (x) Location and description of temperature, pressure, and flow indicating devices and control devices; and

(3) A description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from operational or trial burns are provided to support the contention that a trial burn is not needed. The data should include those items listed in Subsection 17.03(c)(1). This analysis should specify the POHCs which the applicant has identified in the waste for which a permit is sought, and any differences from the POHCs in the waste for which burn data are provided; and

(4) The design and operating conditions to be used compared with that for which comparative burn data are available; and

(5) A description of the results submitted from any previously conducted trail burn(s) including:

(i) Sampling and analysis techniques used to calculate performance standards,

(ii) Methods and results of monitoring temperatures, waste feed rates, air feed rates, and carbon monoxide concentration, and

(iii) Identification of any hazardous combustion by-products detected; and

(6) The expected operation information to demonstrate compliance with the performance standards and operating requirements of this regulation including;

- (i) Expected carbon monoxide (CO) level in the stack exhaust gas,
- (ii) Waste feed rate,
- (iii) Combustion zone temperature,
- (iv) Air feed rate,
- (v) Expected stack gas volume, flow, and temperature,
- (vi) Computed residence time for waste in the combustion zone,
- (vii) Expected hydrochloric acid removal efficiency,
- (viii) Expected fugitive emissions and their control procedures,
- (ix) Proposed waste feed cut-off limits based on the identified significant operating parameters; and

(7) Supplemental information as the Director finds necessary to achieve the purpose of this subsection; and

(8) Hazardous waste analysis data, including that submitted in Subsection 17.03(c)(1), sufficient to allow the Director to specify as permit POHCs those constituents for which destruction and removal efficiencies will be required; and

17.04. The Director may exempt the applicant from a trial

burn if he determines, based upon the information submitted in accordance with 17.03(c), that the applicant's facility will comply with the performance standards in Section 8, facility requirements of Section 9, and such operating permit requirements to be specified in accordance with Section 10.

Section 18. Signatories to Permit Application, Registrations, and Reports

18.01. All permit applications shall be signed as follows:

(a) For a corporation: By a principal executive officer authorized to act for and on behalf of the corporation of at least the level of vice-president; or

(b) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official; or

(d) By a duly authorized representative as defined in Subsection 18.02.

18.02. All reports required by permits and other information requested by the Director shall be signed by a person described in Subsection 18.01 above or by a duly authorized representative only if:

(a) The authorization is made in writing by a person described in Subsection 18.01; and

(b) The authorization specifies either an

individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility; and

(c) The written authorization is submitted to the Director.

18.03. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements shall be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

18.04. Any person signing a document under Section 18 shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility

of fine and imprisonment."

For the purpose of this subsection, the requirements that the signer have "personally examined" and be "familiar with" the information submitted means that the signer must have read the document and must sufficiently comprehend the information contained in the document and its regulatory consequences to enable him or her to make a reasonable inquiry as to the truth, accuracy, and completeness of the information. The requirement that the signer make "inquiry of those individuals immediately responsible for obtaining the information" means that the signer shall make a good faith effort to ascertain whether or not the information submitted complies with the requirements of this subsection.

Section 19. Conditions Applicable to All Permits

The following conditions apply to all treatment and disposal permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

19.01. Duty to comply. The permittee shall comply with all conditions of his permit. Any permit non-compliance constitutes a violation of this regulation

- and is grounds for enforcement action; for permit termination, revocation, and reissuance or modification; or denial of a permit renewal application.
- 19.02. Duty to reapply. If the permittee wishes to continue a regulated activity after the expiration date of his permit, he shall apply for, and obtain, a new permit.
- 19.03. Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of his permit.
- 19.04. Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment to human health resulting from noncompliance with his permit.
- 19.05. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of his permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation

of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

- 19.06. Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- 19.07. Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege. Possession of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulation.
- 19.08. Duty to provide information. The permittee shall furnish to the Director within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating a permit or to determine compliance with a permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by the permit.

19.09. Inspection and entry. The permittee shall allow the Director or his duly authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) At reasonable times enter any building, property, premises, place, or permitted facility where hazardous wastes are, or have been generated, treated, stored, transported, or disposed of for the purpose of making an investigation with reasonable promptness to ascertain the compliance by any person with the provisions of this regulation; and

(b) At reasonable times enter any establishment or other place maintained by any person where hazardous wastes are or have been stored, treated, or disposed of to inspect and take samples of wastes, air, or any containers or labelings for such wastes. In taking such samples, the Director or such authorized representative, may utilize such sampling methods as he determines to be necessary. If the Director or such representative, obtains any such samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge, a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume

or weight to the portion retained. The Director shall promptly provide a copy of any performed analysis to the owner, operator, or agent in charge; and

(c) At reasonable times examine all records relating to the storage, treatment, or disposal of hazardous waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the Director or an authorized representative, shall be furnished with copies of all such records or given the records for the purpose of making copies. If the Director, upon inspection, investigation, or through other means, observes or learns of a violation or probable violation of this article, the Commission is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses to compel the production of any books, papers, documents, manifests, and other physical evidence pertinent to such investigation or inspection.

Section 20. Trial Burns

20.01. For the purpose of determining feasibility of compliance with hazardous waste incinerator performance standards, Section 8, and of determining adequate

incinerator operating conditions under Section 10, the Director may issue a trial burn permit to a facility to allow short-term operation of a hazardous waste incinerator.

20.02. The trial burn must be conducted in accordance with a trial burn plan prepared by the applicant and approved by the Director. The trial burn plan will then become a condition of the permit. The trial burn plan will include the following information:

(a) An analysis of each hazardous waste or mixture of wastes to be burned which includes:

(1) Heating value of the hazardous waste in the form and composition in which it will be incinerated,

(2) Viscosity (if applicable), or description of physical form of the hazardous waste,

(3) An identification of any hazardous organic constituents listed in Appendix VIII of the DNR Regulations which are present in the hazardous waste to be incinerated except that the applicant need not analyze for constituents in Appendix VIII of the DNR Regulation which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion

stated. The waste analysis must rely on analytical techniques specified in EPA Document SW-846 or other equivalent techniques approved by the EPA Administrator,

(4) An approximate quantification of the hazardous constituents identified in the waste within the precision produced by analytical methods specified in EPA Document SW-846, or equivalent techniques approved by the EPA Administration, and

(5) A quantification of those hazardous constituents in the waste which may be designated POHC's based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards of this regulation; and

(b) A detailed engineering description of the incinerator for which the trial burn permit is sought including:

(1) Manufacturer's name and model number,  
(2) Type of incinerator,  
(3) Linear dimensions of the incinerator including the cross sectional area of the combustion chamber,

(4) Description of the auxiliary fuel system (type/feed),

(5) Capacity of prime mover,

(6) Description of automatic waste feed

cut-off system(s),

(7) Stack gas monitoring and pollution control equipment,

(8) Nozzle and burner design,

(9) Construction materials, and

(10) Location and description of temperature, pressure, and flow indicating and control devices; and

(c) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis; and

(d) A detailed test schedule for each waste for which the trial burn is planned including date(s), duration, quantity of waste to be burned, and other factors relevant to the Director's decision under Subsection 20.05; and

(e) A detailed test protocol including for each waste identified, the ranges of temperature, waste feed rate, air feed rate, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator; and

(f) A description of, and planned operating

conditions for, any emission control equipment which will be used; and

(g) Procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and

(h) Such other information as the Director reasonably finds necessary to determine whether to approve the trial burn plan in light of this regulation and the criteria in Subsection 20.05.

20.03. The Director, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section.

20.04. Based on the waste analysis data in the trial burn plan, the Director will specify as trial POHC's those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHC's will be specified by the Director based on his estimate of the difficulty of incineration of the constituents identified in the waste analysis, the concentration or mass in the waste feed, and, for wastes listed in Section 7, the hazardous waste constituent or constituents identified in Appendix VIII of the DNR Regulations.

(d) A total mass balance of the trial POHCs in the hazardous waste; and

(e) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in Section 8; and

(f) If the hazardous waste contains more than 0.5 percent chlorine, a computation of chlorine removal efficiency; and

(g) A computation of particulate emissions in accordance with Section 8; and

(h) An identification of sources of fugitive emissions and their means of control; and

(i) A measurement of average, maximum and minimum temperatures, and air feed rates; and

(j) A continuous measurement of CO in the exhaust gas; and

(k) Such other information as the Director may specify as necessary to ensure that the trial burn will determine compliance with the performance standards of this regulation and to establish the operating requirements necessary to meet the performance standards.

20.07. The applicant shall submit to the Director a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and the results of all determinations required by Subsection 20.06. This

submission shall be made within forty-five (45) days upon completion of the test.

20.08. All data collected during any trial burn must be submitted within forty-five (45) days to the Director following completion of the trial burn.

20.09 All submissions required by this section shall be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or report.

Section 21. Permit Application Review Procedures

21.01. The Director shall not begin the processing of a permit application until the applicant has submitted complete Part A and Part B permit applications as more fully set forth in Section 17.

21.02. Permit applications must comply with the signature and certification requirements of Section 18.

21.03. The Director shall review for completeness each application for a construction permit within thirty (30) days. Each application for an operating permit shall be reviewed for completeness within sixty (60) days. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing

treatment or disposal process, the Director shall specify in the notices of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving all such required information. In addition, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

21.04. If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions may be taken under the applicable statutory provisions.

21.05. If the Director decides a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a date shall be scheduled.

21.06. The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in Subsection 21.03.

21.07. Once an application is complete and reviewed, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.

(a) If the Director tentatively decides to deny the

permit application, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Director's final decision is that the tentative decision to deny the permit application was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft permit,

(b) If the Director tentatively decides to grant a permit, he shall prepare a draft permit that contains the following information:

- (1) All conditions under Section 19; and
- (2) Monitoring and inspection requirements under Section 11; and
- (3) Standards for treatment, storage, and disposal and other permit conditions under Section 8, 9, and 10 of this regulation.

21.08. Public notice of activities under Subsection 21.07 shall be given by the following methods and shall allow forty-five (45) days for public comment:

(a) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

- (1) The applicant, who shall place a Class I-0

legal advertisement in the paper of general circulation in the county where the source is located. In addition, the applicant shall have such notice broadcast over local radio stations. Upon publication and broadcasting, the applicant shall send the Director a copy of the certificate of publication and confirmation of broadcasting; and

(2) The West Virginia Department of Natural Resources, and

(3) Persons on a mailing list developed by:

(i) Including those who request in writing to be on the list,

(ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area,

(iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or State Law Journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to such a request.)

21.09. All public notices issued under this section shall contain the following information:

(a) Name and addresses of the office processing the permit action for which notice is being given; and

(b) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit; and

(c) A brief description of the business conducted at the facility described in the permit application or the draft permit; and

(d) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, fact sheet, and the application; and

(e) A brief description of the comment procedures required by Subsections 21.12 and 21.13 and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision.

21.10. In addition to the general public notices described in Subsection 21.09, the public notice of a hearing shall contain the following information:

(a) Reference to the date of previous public notices relating to the permit; and

(b) Date, time, and place of the hearing; and

(c) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(d) Name and address of the nearest regional office where the file will be available for inspection; and

(e) In addition, the Director shall transmit to DNR a copy of the general public notice, the fact sheet, the permit application, and the draft permit.

21.11. A fact sheet shall be prepared by the Director for each hazardous waste treatment or disposal facility draft permit.

The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant, DNR, and upon written request, to any other person.

The fact sheet shall include, when applicable:

(a) A brief description of the type of facility or activity which is the subject of the draft permit,

(b) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged. A description of the type of wastes, fluids, or pollutants shall include, but not be limited to, effects on public

health and the environment.

(c) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions.

(d) Reasons why any requested variances or alternatives to required standards do or do not appear justified.

(e) A description of the procedures for reaching a final decision on the draft permit including:

(1) The beginning and ending dates of the comment period and the address where comments will be received,

(2) Procedures for requesting a hearing and the nature of that hearing, and

(3) Any other procedures by which the public may participate in the final decision.

(f) Name and telephone number of a person to contact for additional information.

21.12. During the public comment period, any interested person may submit written comments on the draft permit and request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

21.13. The Director shall hold a public hearing whenever he finds, on the basis of requests, a significant degree

of public interest in the draft permit(s). The Director also may hold a public hearing at his discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The Director shall hold a public hearing upon receiving written notice of opposition to a draft permit if the request for a public hearing is filed within forty-five (45) days of the public notice. Whenever possible, the Director shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility. Public notice of the hearing shall be given as specified in Subsection 21.08.

21.14. In addition, at the time any final permit decision is issued, the Director shall issue a response to comments.

This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the change; and

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing; and

(c) The response to comments shall be delivered to any person who commented or any person who requests the same.

21.15. (a) If any data, information, or arguments submitted

during the public comment period appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under Subsection 21.07.

(2) Prepare a revised fact sheet under Subsection 21.11 and reopen the comment period under Subsection 21.08 to give interested persons an opportunity to comment on the information or arguments submitted.

(b) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Subsection 21.08 shall define the scope of the reopening.

21.16. The conditions of an unexpired permit continues in force until the effective date of a new permit if:

(a) The permittee has submitted a timely application under Section 16 which is a complete application for a new permit; and

(b) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

Section 22. Transfer and Duration of Permits

22.01. A permit may be transferred by the permittee to a

new owner or operator only if the permit has been modified or revoked and reissued by the Director to identify the new permittee and incorporate such other requirements as may be necessary to comply with these regulations and the State Act.

22.02. Treatment or disposal operating permits shall be effective for ten (10) years from the date of issue. The Director may issue an operating permit for a duration that is less than the full allowable term under this subsection.

22.03. Trial burn and emergency permits shall be effective for a given term to be specified by the Director.

Section 23. Termination, Revocation and Modification of Permits

23.01. The Director may terminate, revoke, or modify an operating permit or deny renewal of an operating permit for the following reasons:

(a) Noncompliance by the permittee with any condition of a permit or provision of this regulation; or

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(c) A determination that notwithstanding compliance with the permit, the permitted activity poses a threat

to human health or the environment which can only be regulated to acceptable levels by such action by the Director.

23.02. The termination, revocation, or modification of a permit to operate, construct, or modify a facility shall be embodied in an order issued by the Director and shall take effect upon issuance. Any such Order may be appealed to the Commission in accordance with the provisions of Chapter 16, Article 20, Section 6 of the Code.

23.03. Once the Director has issued an order terminating an operating, construction, or modification permit, the owner of the affected facility must prepare and submit a new application for any such permit unless further operation or construction is permanently terminated.

Section 24. Minor Modification of Permits

Upon the consent of the permittee, the Director may modify a permit to make corrections or allowances for changes in the permitted activity listed in this section without following the required procedures for modification. Any permit modification not processed as a minor modification under this section shall be made for causes and with draft permit and public notice as required.

Minor modifications may only:

- (a) Correct typographical error; and
- (b) Require more frequent monitoring or reporting

by the permittee; and

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty (120) days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; and

(d) Change the owner or operator of a hazardous waste facility upon submission to the Director of a change of owner or operator application which shall be made upon such form and in such manner as determined by the Director.

Section 25. Emergency Permits

25.01. In the event the Director finds an imminent and substantial endangerment to human health or the environment, the Director may issue a temporary emergency permit to a facility to allow thermal treatment of hazardous waste by a nonpermitted facility or hazardous waste not covered by the permit by a facility with an effective operating permit. The permittee need not comply with the conditions of an operating permit to the extent and for the duration such non-compliance is authorized in an emergency permit.

25.02. The emergency permit;

(a) May be oral or written, if oral, it shall be

followed within five (5) days by a written emergency permit; and

(b) Shall not exceed ninety (90) days in duration; and

(c) Shall clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal; and

(d) May be terminated by the Director at any time without process if it is determined that termination is appropriate to protect human health or the environment; and

(e) Shall be accompanied by a public notice which shall be published by the permittee as a Class I-O notice in the local area and shall include the following:

(1) Name and address of the office granting the emergency authorization,

(2) Name and location of the permitted Hazardous Waste Management facility,

(3) A brief description of the wastes involved,

(4) A brief description of the emergency permit,

and

(5) Duration of the emergency permit; and

(f) Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this regulation.

Section 26. Closure

At closure, the owner or operator of a hazardous waste thermal treatment facility must remove all hazardous waste and hazardous waste residues (including, but not limited to ash, scrubber water, and scrubber sludges) from the thermal treatment process.

Section 27. Existing Facilities

- 27.01. Within sixty (60) days of the effective date of this regulation, all persons conducting thermal treatment of hazardous waste, or any other treatment or disposal facility which discharges, or may discharge, hazardous waste to the atmosphere, shall submit to the Director a Part A permit application as described in Subsection 17.01.
- 27.02. Within six (6) months of the effective date of this regulation, all persons incinerating hazardous waste shall submit a Part B permit application as described in Subsection 17.02. In addition to the information required in the Part B permit application, the permit application must contain all information required under Subsection 17.03 of this regulation.
- 27.03. Owners or operators of hazardous waste incinerators in existence on the effective date of this regulation shall be treated as having an operating permit until such time that the Director issues a final determination in relation to such operating permit application.

- 27.04. The owner or operator of an existing hazardous waste incinerator for which the Director denies issuance of a permit shall develop and submit to the Commission, within thirty (30) days of notification of said denial, an acceptable compliance program for the attaining and maintaining of the requirements of this regulation.
- 27.05. In the event an owner or operator of an existing hazardous waste incinerator which does not meet the requirements of this regulation fails to submit an acceptable control program within the time allowed, the Commission shall, by order, determine a reasonable control program for the attaining and maintaining of the requirements of this regulation.
- 27.06. In the event that a hazardous treatment or disposal facility other than incinerators, in existence on the effective date of this regulation, does not meet the requirements and standards of this regulation, an acceptable program to fully comply with this regulation shall be developed and offered to the Commission by the responsible owner or operator. Such program shall be submitted upon the request of and within such time as shall be fixed by the Director. The owner or operator of such facility shall

not be in violation of this regulation pending submission and consideration of such program and for so long as the approved or amended program is observed. In the event that the owner or operator of any such facility fails to submit an acceptable program and schedule the Commission shall, by order, determine the complete program and schedule.

Section 28. Confidential Information

28.01. Any records, reports, or information and any permit, permit applications, and related documents within the Director's possession shall be available to the public for inspection and copying; provided, however, that upon satisfactory showing to the Director that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the Director shall consider, treat, and protect such records as confidential.

28.02. It shall be the responsibility of the person claiming any information as confidential under the provisions of Subsection 28.01 above to clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection.

28.03. Any document submitted to the Director which contains information for which claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two (2) separate parts. The first part shall contain all information which is not deemed by the person preparing the reports as confidential and shall include appropriate cross-references to the second part which contains data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

28.04. No information shall be protected as confidential information by the Director unless it is submitted in accordance with the provisions of Subsection 28.03 above and no information which is submitted in accordance with the provisions of Subsection 28.03 above shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.

28.05. All information which meets the tests of Subsection 28.04 above shall be marked with the term "ACCEPTED" and shall be protected as confidential information. If

said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of Subsection 28.04 above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information.

28.06. Nothing contained herein shall be construed so as to restrict the release of relevant confidential information during situations declared to be emergencies by the Director or his designee.

28.07. Nothing in this section may be construed as limiting the disclosure of information by the Director to any officer, employee or authorized representative of the State or Federal Government concerned with effecting the purposes of this article.

28.08. Persons interested in obtaining information pursuant to this section should submit a request in accordance with the Commission's Miscellaneous Rule No. 1.

28.09. The following information shall not be considered confidential:

- (a) The name and address of the permittee; and
- (b) Emission data; and
- (c) Monitoring reports and associated data.

Section 29. Notice of Changes

Persons desiring to call to the attention of the

Commission amendments to the Federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto, may do so by filing a notice with the Director, identifying the amendment which has been made to the Federal Solid Waste Disposal Act, as amended, or regulations promulgated pursuant thereto and identifying the provision of this regulation which such person believes should be amended.

Section 30. Application Fees

Any person who applies for a permit for the construction and/or operation of a hazardous waste management facility shall submit as part of said application a money order or cashier's check payable to "the Hazardous Waste Management Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

A. New or Reconstructed Thermal Treatment Facilities

Treatment design capacity more than 1000 tons/yr	\$5,000
--	---------

Treatment design capacity less than 1000 tons/yr	2,500
--	-------

B. Modified or Renewed Thermal Treatment

<u>Facilities</u>	\$1,000
-------------------	---------

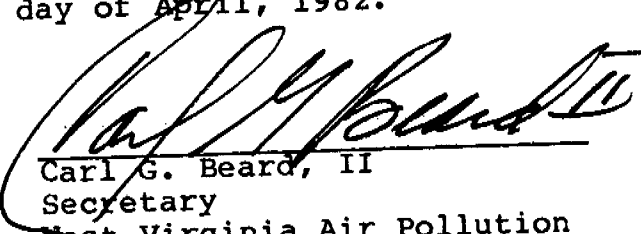
Sec. 31.

APCC  
Adm. Reg. 16-20 & 20-5E  
Series XXV

Section 31. Effective Date

Regulation XXV (1982) shall become effective May  
8, 1982.

The foregoing is a true and correct copy of the West  
Virginia Air Pollution Control Commission Regulation XXV  
(1982) as adopted on the 6th day of April, 1982.



Carl G. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

A. JAMES MANCHIN  
 SECRETARY OF STATE

STATE REGISTER FILING

I, David C. Callaghan, Chairman,  
 Title or Position

Reclamation Commission, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- ( ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ( ) proposed rules and regulations superseding rules and regulations already on file;
- ( ) notice of hearing;
- ( ) findings and determinations;
- (X) rules and regulations; or
- (X) other - specify (Declaration of Emergency )).

This filing pertains to


Chapter 20  
 Article 6  
 Series VII  
 Section 1-9 and 11-16 and Ch. 1-21  
 Page No. 1-238; 277-298 and 1-302


- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- ( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;


April 21, 1981  
 Date Submitted

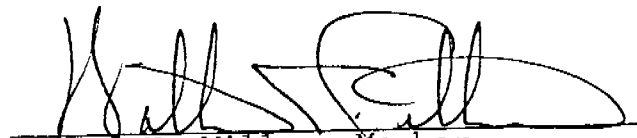
*David C. Callaghan*  
 Signature of Person Authorizing  
 this Filing

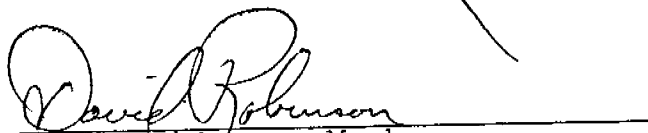
FILED IN THE OFFICE OF  
 SECRETARY OF STATE  
 THIS DATE 4/21/81

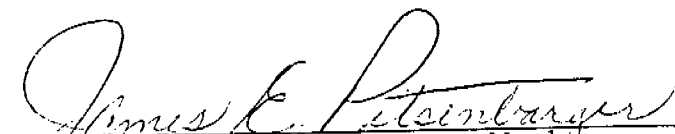
  
David C. Callaghan, Director  
Department of Natural Resources

  
David C. Callaghan, Chairman  
Reclamation Commission

  
Walter N. Miller, Director  
Department of Mines

  
Walter N. Miller, Member  
Reclamation Commission

  
David Robinson, Member  
Reclamation Commission

  
James E. Pitsenbarger, Member  
Reclamation Commission

## DECLARATION OF EMERGENCY

Pursuant to Chapter 29A, Article 3, Section 14 of the Code of West Virginia, 1977, as amended, the Reclamation Commission hereby promulgates the attached regulations on an emergency basis and makes the following "Statement of Facts and Circumstances Constituting the Emergency".

The United States Congress, in passing the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), mandated that all coal producing states, with the approval of the Secretary of the United States Department of the Interior, adopt and implement a state program regulating the environmental effects of all coal mining operations in conformity with the mandates of P.L. 95-87 and regulations promulgated by the Secretary of the Interior or, in the alternative, if a state was unable to adopt such a program, Congress mandated the Secretary of the Interior to preempt state regulation of coal mining operations through the establishment of a federal program in such state. The 1980 session of the West Virginia Legislature recognized the necessity from both an economic and environmental standpoint that regulation of West Virginia's coal mine industry was best left to the West Virginia Department of Natural Resources. On March 8, 1980, the Legislature passed Committee Substitute for H.B. 1529 (the state counterpart of P.L. 95-87) and made H.B. 1529 effective after approval of the Secretary of the Interior upon proclamation of the Governor.

FILED IN THE OFFICE OF

SECRETARY OF STATE

7/21/81 -

The Secretary of the Interior, on January 15, 1981, approved the program submitted by the West Virginia Department of Natural Resources to comply with the mandates of P.L. 95-87. On January 19, 1981, Governor John D. Rockefeller IV declared H.B. 1529 effective. The regulations which accompany this emergency declaration were enacted into law on an emergency basis on January 19, 1981, thereby insuring the State of West Virginia primacy over its surface and underground coal mining industry as desired by the West Virginia Legislature.

In accordance with P.L. 95-87, the West Virginia Department of Natural Resources could not legally continue to issue any new permits or continue to regulate coal mining under H.B. 1529 unless rules and regulations were promulgated pursuant thereto were also fully enacted as law. P.L. 95-87 requires that states with primacy have the necessary legal authority at all times to issue permits and require compliance with federal law and regulations. This can only be done in West Virginia if both H.B. 1529 and these rules and regulations remain effective. The inability of the State of West Virginia to issue new permits after April 20, 1981, seriously jeopardizes the economic stability of this State and that of the Nation as a whole. The inability of this State to issue permits after April 20, 1981, would result in further future economic losses.

On the other hand, the inability of the State of West Virginia to regulate the environmental effects of its coal industry after April 20, 1981, could have serious consequences upon public health and the safety and general welfare of the citizens and environment of the State of West Virginia as found by the State Legislature in West Virginia Code 20-6-1.

In the event that the State of West Virginia would not have adequate legal authority to regulate its mining industry in compliance with P.L. 95-87, federal law mandates that the federal government preempt and assume present Department of Natural Resources' functions. The federal Office of Surface Mining is not equipped to regulate West Virginia's coal industry or to protect West Virginia's environment in the manner heretofore accomplished by the West Virginia Department of Natural Resources.

Without an emergency declaration which immediately promulgates these rules and regulations, the State of West Virginia will be disqualified from receiving approximately 30 million dollars in funds which are earmarked to reclaim areas of land in this State that were affected by past coal mining operations and left in an abandoned or unreclaimed state on or before August 3, 1977. The Department of Natural Resources has already targeted 40 priority projects which will be eligible for funding and have already begun preparatory work on some of these projects. Were the State unable to promulgate these regulations today, given the present rate of inflation, the 30 million dollars available to it would accomplish less in the future than it could now. The inability of the State to remain eligible for these funds serves no one's purpose.

Furthermore, the inability of the State of West Virginia to retain primacy under P.L. 95-87 would serve to defeat the declared intentions of both the Congress of the United States and the Legislature of the State of West Virginia. Both recognized that regulation of the coal mining industry was best left to the individual states. As Section 101(f) of P.L. 95-87 and West Virginia Code 20-6-2(a) clearly demonstrate,

state governments should be and are best able to tailor regulatory programs to satisfy the needs of industry within their borders. Thus, this emergency promulgation is in total accord with the express intent of both federal and state governments.

Finally, the Legislative Rule Making Committee, the Committee vested by law with the responsibility of approving these regulations has only met once since these regulations were originally promulgated on January 19, 1981. At that one meeting, an organizational meeting, the Committee did not review any regulations. Since the first formal meeting of the Committee will not take place until mid-May 1981, the Reclamation Commission has no alternative but to repromulgate these regulations on an emergency basis.

# WEST VIRGINIA SURFACE MINING RECLAMATION REGULATIONS

Department of Natural Resources

Chapter 20-6  
Series VIII  
(1981)

Subject: Rules and regulations pertaining to definitions, general permit requirements, transportation facilities, drainage systems, blasting, post mining land use, fish and wildlife considerations, revegetation, prime farmlands, bonding, prospecting, additional permit requirements and performance standards for surface mining operations, additional permit requirements and performance standards for surface effects of underground mining operations, subsidence control, additional permit requirements and performance standards for facilities incidental to coal mining, additional permit requirements and performance standards for coal removal incidental to development, exemptions, small operators assistance program, notice of citizens' suits, citizens' inspections, designation of areas unsuitable for coal mining, inspections, enforcement, open meetings and Reclamation Board of Review appeals.

---

## SECTION 1. GENERAL

1.01. Scope - These regulations establish general and specific rules for general permit requirements, transportation facilities, drainage systems, blasting, post mining land use, fish and wildlife considerations, revegetation, prime farmlands, bonding, prospecting, additional permit requirements and performance standards for surface mining operations, additional permit requirements and performance standards for surface effects of underground mining operations, subsidence control, additional permit requirements and performance standards for facilities incidental to coal mining, additional permit requirements and performance standards for coal removal incidental to development, exemptions, small operators assistance program, notice of citizens' suits, citizens' inspections, designation of areas unsuitable for coal mining, inspections, enforcement, open meetings and Reclamation Board of Review appeals.

1.02. Applicability - These rules and regulations:

(a) Apply to any prospecting which is required by the Act to submit a notice of intent to prospect or obtain approval to prospect over two hundred and fifty (250) tons of coal after March 20, 1981;

(b) Apply to any surface mining permit, incidental permit or special permit obtained pursuant to this Act after January 18, 1981;

(c) With the exception of Sections 2, 3A.02, 11, 12, 14, 15, and 16, do not apply to any existing incidental mining, surface mining, or existing underground mining operation until after the appropriate date specified in Section 42 of the Act; and

(d) Do not repeal any rules or regulations promulgated pursuant to the provisions of Chapter Sixty-three, acts of the Legislature, regular session, one thousand nine hundred seventy-nine which continue to govern those operations listed in Subsection (c) above until after the applicable date specified in Section 42 of the Act.

1.03. Authority - These regulations are issued under the authority of Article 6, Chapter 20, Code of West Virginia, as amended.

1.04. Effective Date - These regulations were promulgated on the 21st day of April, 1981.

1.05. Filing Date - These regulations were filed in the Office of the Secretary of State on the 21st day of April, 1981.



STATE OF WEST VIRGINIA  
 OFFICE OF THE SECRETARY OF STATE  
 CHARLESTON 25305

A. JAMES MANCHIN  
 SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,  
 Title or Position

Air Pollution Control Commission, hereby submit to record in  
 Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify ( ) .

This filing pertains to Temporary Regulation XIX-Z - Requirements for Preconstruction Review, Determination of Emission Offsets for Proposed new, Modified or Reconstructed Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

Chapter 16  
 Article 20  
 Series XIX-Z  
 Section \_\_\_\_\_  
 Page No. \_\_\_\_\_

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

October 27, 1981  
 Date Submitted

Carl G. Beard II  
 Signature of Person Authorizing  
 this Filing

FILED IN THE OFFICE OF  
 A. JAMES MANCHIN  
 SECRETARY OF STATE  
 THIS DATE 10-27-81  
 Administrative Law Division

**WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION**

STATEMENT OF FACTS AND CIRCUMSTANCES CONCERNING  
TEMPORARY REGULATION XIX-Z

Each state, under the Federal Clean Air Act, must file a state implementation plan. Part of the state implementation plan, according to Federal requirements, must contain rules and regulations concerning a specific regulatory process for new source review for areas where air quality standards are not currently being met. As final Federal rules have yet to be adopted, the West Virginia Air Pollution Control Commission adopted temporary Regulation XIX-Z at their meeting on October 16, 1981, to fulfill this Federal requirement.

FILED IN THE OFFICE OF  
**A. JAMES MANCHIN**  
SECRETARY OF STATE  
THIS DATE 10-27-81  
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Regulation XIX-Z--Requirements for Preconstruction  
Review, Determination of Emission Offsets for Proposed  
New, Modified or Reconstructed Stationary Sources of  
Air Pollutants and Bubble Concept for Intrasource Pol-  
lutants

INDEX.

Section 1. Intent and Purpose

1.01. - Emission Offsets

1.02. - Bubble Concept

Section 2. Definitions

2.01. - "Actual Emissions"

2.02. - "Allowable Emissions"

2.03. - "Applicable Regulations"

2.04. - "Applicant"

2.05. - "Air Pollutants"

2.06. - "Air Quality Control Region (AQCR)"

2.07. - "Baseline"

2.08. - "Begin Actual Construction"

2.09. - "Commission"

2.10. - "Commence"

2.11. - "Construction"

2.12. - "Director"

2.13. - "Emissions"

2.14. - "Facility"

2.15. - "Fixed Capital Cost"

- 2.16. - "Fugitive Emissions"
- 2.17. - "Intrapollutants Emission Offsets"
- 2.18. - "Intrasource Pollutants"
- 2.19. - "Lowest Achievable Emission Rate (LAER)"
- 2.20. - "Major Modification"
- 2.21. - "Major Stationary Source"
- 2.22. - "National Ambient Air Quality Standard (NAAQS)"
- 2.23. - "Necessary Pre-construction Approvals or Permits"
- 2.24. - "Net Emissions Increase"
- 2.25. - "Nonattainment Area"
- 2.26. - "Offset"
- 2.27. - "Person"
- 2.28. - "Potential to Emit"
- 2.29. - "Reasonable Further Progress"
- 2.30. - "Reconstruction"
- 2.31. - "Resource Recovery Facility"
- 2.32. - "Secondary Emissions"
- 2.33. - "Significant"
- 2.34. - "Source"
- 2.35. - "Temporary Source"

Section 3. Applicability of Regulation

Section 4. Conditions for a Permit Approval for Proposed  
Major Sources that Would Contribute to a  
Violation of a NAAQS

- Section 5. Conditions for Permit Approval for Sources Locating  
in Attainment or Unclassifiable Areas That Would  
Cause a New Violation of a NAAQS
- Section 6. Exemption from Certain Conditions
- Section 7. Baseline for determining Credit for Emission  
Offsets
- Section 8. Location of Offsetting Emissions
- Section 9. Administrative Procedures for Emission Offset  
Proposals
- Section 10. Banking of Emission Offset Credit
- Section 11. Control of Fugitive Emissions
- Section 12. Offsetting of Secondary Emissions
- Section 13. Bubble Concept for Intrasource Pollutants
- Section 14. Discretionary Decisions Made by the Director
- Section 15. Conflict with Other Rules or Regulations
- Section 16. Effective Date

WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Air Pollution Control Commission

FILED IN THE OFFICE OF  
A. JAMES MANCHIN  
SECRETARY OF STATE

Chapter 16-20  
Series XIX-Z  
(1981)

THIS DATE 10-27-81  
Administrative Law Division

Subject: Regulation XIX-Z- Requirements for Preconstruction  
Review, Determination of Emission Offsets for  
Proposed New, Modified or Reconstructed Stationary  
Sources of Air Pollutants and Bubble Concept for  
Intrasource Pollutants.

---

Section 1. Intent and Purpose

1.01. Emission Offsets

It is the intent of the Commission that all applications filed by any person to construct major new, modified or reconstructed stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the preconstruction review procedures and conditions of the Clean Air Act Amendments of 1977.

These conditions are designed to insure that the major new, modified or reconstructed source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from

existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

1.02. Bubble Concept

It is the intent of the Commission to extend to the owners or operators of existing sources of air pollutants the option of proposing alternative emission reduction plans employing a more economically efficient mix of control technology.

This alternative emission reduction concept, called the "Bubble Concept", permits the owners or operators of sources to place a greater burden of control on facilities where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be, and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or delay compliance with the applicable regulations, or any requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, or the Federal Clean

Air Act, as amended, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

Section 2. Definitions

- 2.01. "Actual Emissions", shall mean the actual rate of emissions of a pollutant from an emissions unit using the units actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which time period shall be a two year period unless a determination is made by the Director that a different time period is more representative of normal source operation. For any emissions unit which has not begun normal operations, actual emissions equal the potential to emit of the unit on the date of filing of the application to construct.
- 2.02. "Allowable Emissions", shall mean the emissions rate calculated using the maximum rated capacity of the source and the most stringent of the following:
- (a) The applicable regulations for such source;
- or,
- (b) The emissions rate specified as a permit condition.
- 2.03. "Applicable Regulations", shall mean the West Virginia Administrative Regulations of the Air Pol-

lution Control Commission as promulgated pursuant to Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended.

2.04. "Applicant", shall mean any person who makes application to this Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of these regulations.

2.05. "Air Pollutants", shall mean solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

2.06. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:

Region I - made up of the counties of Brooke, Hancock, Marshall and Ohio;

Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;

Region III - made up of the counties of Cabell, Mason and Wayne;

Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;

Region V - made up of the counties of Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;

Region X - made up of the counties of Berkeley, Jefferson and Morgan.

2.07. "Baseline", shall mean the limitation of emissions of a source, as determined by the applicable regulations in effect at the time the application to construct or modify a source is filed and is more fully defined in Section 7 herein.

2.08. "Begin Actual Construction", shall mean, in

general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities which mark the initiation of the change.

2.09. "Commission", shall mean the West Virginia Air Pollution Control Commission.

2.10. "Commence", shall mean as applied to construction of a major stationary source or major modification that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

2.11. "Construction", shall mean any physical change or

change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

- 2.12. "Director", shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.13. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are well defined and quantifiable and result from activities related to such source or facility.
- 2.14. "Facility", shall mean an identifiable piece of process equipment. A stationary source is composed of one or more pollutant emitting facilities.
- 2.15. "Fixed Capital Cost", shall mean the capital needed to provide all the depreciable components.
- 2.16. "Fugitive Emissions", shall mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- 2.17. "Intrapollutant Emission Offsets", shall mean that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub>

reductions or coke plant particulate matter may not be offset against boiler fly ash).

2.18. "Intrasource Pollutants", shall mean air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.

2.19. "Lowest Achievable Emission Rate (LAER)", shall mean, for any source, that rate of emissions based on the following, whichever is more stringent:

(a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a new, modified, or reconstructed facility, means the lowest achievable emission rate for such facility within the source. In no event shall the application of this term permit a proposed new, modified, or reconstructed facility to emit any pollutant in excess of the amount allowable under applicable new source standards of

performance.

2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation by the Commission. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair and replacement;
- (b) Use of alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;
- (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (e) Use of an alternative fuel or raw material

by a stationary source which:

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or CFR 51.24; or

(2) The source is approved to use under any permit issued under regulations approved pursuant to this section;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

(g) Any change in ownership at a stationary source.

2.21. "Major Stationary Source", shall mean:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation by the Commission; or

(b) Any physical change that would occur at a

stationary source not qualifying under paragraph 2.21 (a) as a major stationary source if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

2.22. "National Ambient Air Quality Standard (NAAQS)", shall mean the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.23. "Necessary Pre-construction Approvals or Permits", shall mean those permits or approvals required by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder.

2.24. "Net Emissions Increase", shall mean the amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences, and

(b) The date that the increase from the particular change occurs.

(2) An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

(3) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(4) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is judicially enforceable at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing

any permit under this regulation; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(5) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

2.25. "Nonattainment Area", shall mean for the purpose of this regulation, those areas designated by the Commission as not having attained National Ambient Air Quality Standards for specific air pollutants.

2.26. "Offset", and "emission offset", shall mean an emission reduction of a given pollutant achieved at an existing source (or facility within such source) that allows for the emission of such given pollutant at a different proposed source (or facility within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility within such source), is greater, on a

pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source(s) including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for the emission of such given pollutant at a different facility within the same existing source.

2.27. "Person", shall mean any and all persons, natural or artificial, including the State of West Virginia or any other state, any state political subdivision, the United States of America, any municipal, statutory, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

2.28. "Potential to Emit", shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of

operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is approved and enforceable by the Commission. Secondary emissions do not count in determining the potential to emit of a stationary source.

- 2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality "NAAQS".
- 2.30. "Reconstruction", shall mean the replacement of components of an existing stationary source to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new stationary source. In addition, any determination shall also be considered in accordance with 40 CFR 60.15 (f) (1-3). A reconstructed stationary source will be treated as a new stationary source for purposes of this regulation. In determining LAER for a reconstructed stationary source, the provisions of 40 CFR 60.15 (f) (4) shall be taken into

account in assessing whether a new source performance standard is applicable to such stationary source.

2.31. "Resource Recovery Facility" shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this regulation.

2.32. "Secondary Emissions", shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, or reconstruction, but do not come from the source itself.

Secondary emissions may include, but are not limited to:

(a) Emissions from vessels or trains coming to or from a refinery, terminal facility, etc.

(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a major source, modification or relocation.

2.33. "Significant", shall mean, in reference to a

net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants:

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

2.34. "Source", shall mean any structure, building, facility, equipment, or installation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

2.35. "Temporary Source", and "sources of temporary emissions", shall mean for a source located in a nonattainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section

2, of the Code of West Virginia, 1931, as amended.

Section 3. Applicability

3.01. This regulation shall apply to all major stationary sources intending to locate in a designated nonattainment area and to all major modifications or reconstruction to any existing sources located in designated nonattainment areas. This regulation shall also apply to all proposed major stationary sources and to all major modifications or reconstruction to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area.

3.02. The determination under this regulation of whether such a source will cause or significantly contribute to a violation of a NAAQS will be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

3.03. This regulation shall not apply to sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, resource recovery facilities utilizing municipal solid waste to provide more than 50 percent of the

heat input for generating steam or electricity.  
However, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

Section 4.     Conditions for a Permit Approval for Proposed Major Sources That Would Contribute to a Violation of a NAAQS

4.01.     (a) Upon determination by the Director that the emissions from a proposed new major source or major source modification, or reconstruction, located within a nonattainment area, or located elsewhere and having a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if such source agrees within its permit application and permit, to meet the following conditions:

(1) The proposed source, modification or reconstruction is required to meet the lowest achievable emission rate (LAER) for such sources;

(2) The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia

are in compliance with all applicable emission limitations and standards of the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or any rule or regulation promulgated thereunder, or is in compliance with a compliance program which is judicially enforceable or contained in a court decree;

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted the proposed new source, modification or reconstruction, (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets are acceptable;

(4) The emission offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of Sub-Section 4.01 (a) (3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible,

the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

Section 5.        Conditions for Permit Approval for Sources  
                  Locating in Attainment or Unclassifiable Areas  
                  That Would Cause a New Violation of a NAAQS

5.01.        Upon determination by the Director that the emissions from a proposed new major source, or major modification, or reconstruction locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the new source agrees within its permit application and permit to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapollutant emission offsets are acceptable.

Section 6.        Exemption from Certain Conditions

6.01. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (a) (3) and (4), and Section 5.01:

(1) Resource recovery facilities burning municipal solid waste; and

(2) Sources which must switch fuels:

(i) due to lack of adequate fuel supplies; or

(ii) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (a) (3) and (4) and Section 5.01, and that such efforts were unsuccessful; and

(2) The applicant has secured all available emission offsets; and

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely

affected.

Section 7. Baseline for Determining Credit for Emission Offsets

7.01. (a) The baseline for determining credit for emission offsets will be the applicable regulation emission limitations in effect at the time the application to construct, modify or reconstruct a source is filed.

(b) Emission offsets shall be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowable production rate.

(c) The Director may specify other averaging periods, such as tons per year, in addition to the pounds per hour basis if necessary to carry out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

(d) Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating

roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.

7.03. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

7.04. (a) The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time the new source application is filed.

(b) No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date the new

source application is filed.

(c) No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.05. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be agreed to in the permit application and embodied in the permit.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down

or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

- 7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1, 1, 1-Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

Section 8. Location of Offsetting Emissions

- 8.01. Offsets shall be obtained from sources located as close to the proposed new modified or reconstructed source site as possible.
- 8.02. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed new, modified or reconstructed source provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new, modified or reconstructed source location;

(2) Emission offsets for sources of sulfur dioxide (SO<sub>2</sub>), and total suspended particulate (TSP), should be obtained from an existing facility on the same premises or in the immediate vicinity of the new or modified source.

(b) If such allowance is granted, as provided for in Sub-Section (a), of this Section, the Commission should increase the ratio of the required offsets for such a source.

(c) In order to ensure that the emission offsets will provide a positive net air quality benefit, the Director may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO<sub>2</sub>) and total suspended particulate (TSP), the source's allowable

emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality benefit. It may, however, be assumed that if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height, the air quality test of Sub-Section 4.01 (a) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

(3) (a) Sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a

nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A VOC source may be exempt from these requirements if the source owner can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO<sub>x</sub> to form additional ozone.

Section 9. Administrative Procedures for Emission Offset Proposals

9.01. Emission offsets may be proposed either by the owner of the proposed major new, modified or reconstructed sources or by the local community or the State.

(a) The emission offsets committed to must be accomplished by the said source's start-up date, except when such major new, modified or reconstructed source is a replacement for a source that is being shut down in order to provide the necessary benefits; in such cases the Director may allow up to 180 days for shakedown of the new source before the existing source is required to cease operation. Such allowances must be requested by the applicant and contained, if

granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major new, modified or reconstructed source located in West Virginia, the offsets committed to must be embodied in a State Implementation Plan revision in the neighboring State and must be judicially enforceable by both States and the U. S. Environmental Protection Agency in accordance with the Clean Air Act, as amended, August 7, 1977.

9.02. (a) Such source may propose emission offsets which involve:

(1) Reductions from sources controlled by the source owner (or by persons under common control); and/or

(2) Reductions from neighboring sources not controlled by the applicant.

(b) A state or local community which desires that such major new, modified or reconstructed source locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such major new, modified or reconstructed source.

9.03. Any emission offset proposal described in Section

9.02 (a) (2) above must be embodied either in the applicant's permit application and permit or in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the US EPA for inclusion in the State Implementation Plan.

Section 10. Banking of Emission Offset Credit

10.01. Major new, modified, or reconstructed sources obtaining permits after January 16, 1979, by applying offsets that exceed the requirements herein are permitted to save ("bank") such offset credit for up to two (2) years to provide offsets for a source seeking a permit in the future under the requirements of this regulation.

10.02. (a) the owner of an existing source that permanently reduces emissions by shutdown or curtailment is permitted to bank any resulting reductions beyond baseline emissions for use in accordance with this regulation.

(b) These banked reductions or offsets may only be used as offset credit by the applicant in a subsequent application filed within a period of two (2) years from the date of said permanent shutdown or permanent curtailment, notwithstanding

the provisions of Sub-Section 7.05 (c). Such offsets shall be identified in the construction permit application.

10.03. Emission reductions not banked or which are not used as offset credit within the specified time will be credited to the State for use or disposal by the Commission at its sole discretion.

10.04. To preserve banked emission offsets, the owner thereof shall notify the Director in writing within sixty (60) days of any such permanent shutdown or permanent curtailment, and the Director shall record the emission offsets in a registry and identify the person that has the right to use, transfer, or allocate the banked emission offsets and shall record any transfers of such banked emission offsets after written notice thereof.

Section 11. Control of Fugitive Emissions

Fugitive emissions associated with major new, modified or reconstructed sources subject to this regulation shall not be excluded from the provisions of this regulation.

Section 12. Offsetting of Secondary Emissions

12.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the applying major source is subject to this

regulation for emission of that same pollutant.

12.02. For the purposes of this regulation, secondary emissions must be shown as specific and well-defined, must be quantifiable, and must impact the nonattainment area as the major source which causes the secondary emissions.

12.03. Secondary emissions shall not be considered in determining whether the significant levels in Section 2.33 would be exceeded.

12.04. (a) For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02 (d).

(2) For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

(b) If the proposed source owner and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the source

owner has the burden of proving it is correct by performing the necessary modeling.

Section 13. Bubble Concept for Intrasource Pollutants

- 13.01. The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of control technology than that mandated by existing or proposed regulations.
- 13.02. It is the responsibility of the owner of the source to develop its specific bubble concept design. The owner also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards.
- 13.03. The Commission shall not approve any bubble concept design without first giving due notice and holding a public hearing, on a case-by-case basis. Such approved bubble concept design shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code.

13.04. An approved bubble concept design shall be in effect for any source for a period of no more than three years from the date of issuance. At the end of such three-year period, the Commission shall review for compliance, the bubble concept design for such source and may either terminate or extend approval of the design based on consideration of air quality, control technology innovation, and such other determinations as the Commission deems appropriate.

Section 14. Discretionary Decisions Made by the Director

Any discretionary decision made by the Director as provided herein may be appealed to the Commission for review by petition. Such review shall be discretionary with the Commission.

Section 15. Conflict with Other Rules or Regulations

When a provision of this regulation conflicts with a similar portion(s) of any rule or regulation previously adopted by the Commission, the provision(s) of this regulation shall apply.

Section 16. Effective Date


Regulation XIX-Z shall become effective as a temporary regulation the 27th day of October, 1981.

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission

APCC  
Adm. Reg. 16-20  
Series XIX-Z

Sec. 16.

Temporary Regulation XIX-Z adopted on the 16th day  
of October, 1981.

  
\_\_\_\_\_  
Carl G. Beard, II  
Secretary  
West Virginia Air Pollution  
Control Commission