

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

**Subject:** Regulation XIII - Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation.

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## ABSTRACT

The amendments to Regulation XIII (1972) were adopted by the Commission on the 19th day of April, 1974. Regulation XIII (1972), as amended, was retitled Regulation XIII (1974), and became effective June 1, 1974, and was filed with the Secretary of State April 29, 1974, and superseded Regulation XIII (1972). Regulation XIII (1972) was adopted by the West Virginia Air Pollution Control Commission on the 5th day of May, 1972 and became effective June 15, 1972 and was filed with the Secretary of State May 11, 1972.

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~  
Air Pollution Control Commission

~~Chapter 16-20~~  
Series ~~XIII~~ 13  
~~(1974)~~

Subject: ~~Regulation XIII~~ - Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation.

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Section 1. General.

1.01. ~~Scope, Intent and Purpose.~~

~~Regulation XIII~~ <sup>Series 13</sup> establishes procedures for permits for construction, modification, or relocation of stationary sources of air pollutants, and procedures for registration and evaluation.

To insure the attainment and maintenance of West Virginia's primary and secondary ambient air quality standards; to protect the difference between the present air quality and the secondary standards in areas of high air quality; and to insure compliance with West Virginia's emission standards, it is the intent of the Commission to register and evaluate sources of air pollutants and to preclude the construction, modification, or relocation of any direct and/or indirect affected source(s) in any locality, in which the establishment of such source(s) may interfere with the attainment or maintenance of these standards, or which would lower the air quality in any area unless it has been clearly demonstrated to the Commission that such change is justifiable as a result of necessary economic or social development and will not result in a statutory air pollution.

The purpose of this regulation is to set forth the procedures for registration and reporting, and the criteria for obtaining a permit to construct a new and/or indirect affected source or to modify or relocate an existing direct and/or indirect affected source within the state of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this regulation. Sources covered by this regulation are termed a direct or indirect "affected source" as herein defined.

1.02. Authority. *W. Va. Code of 16-20-5*

This regulation is issued under the authority of the West Virginia Code, Chapter 16, Article 20, Section 5. This regulation relates to West Virginia Code, Chapter 16, Article 20, Sections 1 through 13 inclusive.

1.03. Filing Date.

This regulation was promulgated or last amended on the 19th day of April, 1974, was filed with the office of the Secretary of State the 29th day of April, 1974. Further, this regulation was filed pursuant to West Virginia Code, Chapter 29A, Article 2, Section 5 on the 30th day of December, 1982 in the office of the Secretary of State.

1.04. Effective Date.

The effective date of this regulation is the 1st day of June, 1974.

1.05. Type.

This regulation is a legislative rule as defined in West Virginia Code, Chapter 29A, Article 2.

  
Section 2. Definitions.

- 2.01. "Air Pollutants" shall mean solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.
- 2.02. "Discharge" shall refer to the release, escape, or emission of air pollutants into the air.
- 2.03. "Air Pollution", 'statutory air pollution', shall have the meaning ascribed to it in Section Two of Chapter Sixteen, Article Twenty of the Code of West Virginia, as amended.
- 2.04. "Commission" shall mean the West Virginia Air Pollution Control Commission.
- 2.05. "Director" shall mean the director of the West Virginia Air Pollution Control Commission.

- 2.06. "Person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.
- 2.07. "Construction" shall mean the fabrication, erection, or installation of a direct or indirect affected source. For the purposes of this regulation, an expansion of an existing direct affected source which increases the amount of any discharge or results in any new discharge shall be considered construction.
- 2.08. "Modification" for the purposes of this regulation is defined as follows:
- (a) "Direct Affected Source Modification" shall mean any physical change in, or change in the method of operation of, an existing direct affected source which increases the amount of any discharge from such existing source or results in any new discharge from such existing source, for which the Commission has promulgated an emission or ambient air quality standard. However, the following actions shall not constitute a modification of a direct affected source:
- (1) An expansion of an existing direct affected source;
  - (2) Routine maintenance, repair, and replacement;

- (3) An increase in hours of operation;
  - (4) An increase in the production rate if such increase does not exceed the design capacity of the affected source; or
  - (5) Use of an alternative fuel or raw material, provided that prior to the effective date of this regulation the affected source is designed to accommodate such alternative use without increasing emissions.
- (b) "Indirect Affected Source Modification":
- (1) Any change in a parking facility located in a Standard Metropolitan Statistical Area which increases the parking capacity of such facility by more than 500 cars;
  - (2) Any change in a parking facility located outside of a Standard Metropolitan Statistical Area which increases the parking capacity of such facility by more than 1,000 cars;
  - (3) Any change which is predicted by a method approved by the Director to increase the average annual daily traffic volume on a road or highway section located within a Standard Metropolitan Statistical Area by 10,000 vehicles per day or more within ten (10) years of modification; or
  - (4) Any change in an airport which is predicted by a method approved by the Director to result within ten (10) years of modification in an increase of 50,000 or more takeoffs or

landings per year by any scheduled air carriers over the existing volume of take-offs or landings, or increase of 1,600,000 or more passengers per year.

2.09. "Relocation" shall mean the physical movement of a direct and/or indirect affected source outside its existing plant boundaries.

2.10. "Commenced" shall mean that an owner or operator has undertaken a continuous program of physical site preparation, construction, modification, or relocation, or that a binding general construction contract has been entered into which obligates one party to such contract to perform the physical work involved in such program of construction, modification, or relocation of a direct and/or indirect affected source. Interruptions resulting from acts of God, strikes, or other matters beyond the control of the owner shall be disregarded in determining whether a construction, modification, or relocation program is continuous.

2.11. "Direct Affected Source".

(a) Except for the exemptions of Sub-Section 2.11(b), for the purpose of this regulation, a 'direct affected source' shall mean:

- (1) Any stationary source subject to any emission regulation promulgated by the Commission; or
- (2) Any stationary source which discharges, or may discharge, more than six (6) pounds per hour of any air pollutant for which

the Commission has promulgated an ambient air quality standard; or

(3) Any source discharging, or which may discharge, a hazardous pollutant(s) as defined by the Commission.

(b) However, for the purpose of this regulation, a 'direct affected source' shall not mean:

(1) Any fuel burning unit having a heat input under ten (10) million B. T. U. 's (British Thermal Units) per hour;

(2) Any internal combustion engines;

(3) Any normal and necessary operation associated with the production of agricultural products grown on the premises or livestock, dogs, cats, and poultry grown on the premises; or

(4) Any other source of minor significance as may be specified by the Commission.

2.12. "Indirect Affected Source"

For the purpose of this regulation an "indirect affected source" shall mean:

(a) Any new parking area located in a Standard Metropolitan Statistical Area with a capacity of 1,000 or more cars;

(b) Any new parking area located outside of a Standard Metropolitan Statistical Area with a capacity of 2,000 cars or more;

(c) Any new airport which is predicted by a method approved

by the Director to have 50,000 or more take-offs or landings per year by regularly scheduled air carriers, or use by 1,600,000 or more passengers per year; or,

(d) Any new road or highway section located inside a Standard Metropolitan Statistical Area which is predicted by a method approved by the Director to have an average annual daily traffic volume within ten (10) years of construction of 20,000 or more vehicles per day.

2.13. "Standard Metropolitan Statistical Area" shall mean any county or group of counties which contain at least one city of 50,000 inhabitants or more, or twin cities with a combined total population of 50,000 inhabitants or more, and any contiguous counties which are socially and economically integrated with the central city.

2.14. "Stationary Source" shall mean, for the purpose of this regulation, any building, structure, facility, or installation, or combination thereof, which may directly emit or indirectly cause to be emitted any air pollutant. Two designated classes of stationary sources shall be "direct affected source" and "indirect affected source".

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

Sixteen, Article Twenty, Section Two of the Code of West Virginia, 1931, as amended, and any rules or regulations promulgated thereunder.

Section 3. Registration and Report Requirements for Direct Affected Sources on which Construction, Modification, or Relocation Commenced Prior to the Effective Date of this Regulation.

3.01. Not later than one hundred twenty (120) days after the effective date of this regulation all persons owning and/or operating a direct affected source(s) shall register such source(s) with the Commission unless such source(s) has been previously registered.

The information required for registration shall be determined and provided in the manner and on such forms as specified by the Director. Registration forms shall be requested from the Director, or his duly authorized representative, by the owner and/or operator of such source(s).

3.02. The owner and/or operator of such a direct affected source shall maintain data on the operation of the source and the Director, or his duly authorized representative may request reports on such data in such reasonable manner and detail as the Director may specify. If requested, such reports shall be filed within fifteen (15) days of the end of the established reporting period. However, reports on such data shall not exceed one (1) per month.

**Section 4. Permit Application and Report Requirements for Direct and/or Indirect Affected Sources on which Construction, Modification, or Relocation is Commenced After the Effective Date of this Regulation.**

- 4.01. No person shall cause, suffer, allow, or permit the construction, modification, or relocation of any direct and/or indirect affected source(s) to be commenced after the effective date of this regulation without notifying the Director of such intent and obtaining a permit(s) to so construct, modify, or relocate the direct and/or indirect affected source(s) as herein provided. Where an indirect affected source is constructed, modified, or relocated in increments which individually are not subject to the provisions of this regulation, all such increments occurring since the effective date of this regulation shall be added together for determining the applicability of this regulation.
- 4.02. Not later than ninety (90) days, for construction or modification of a direct and/or indirect affected source or for relocation of an indirect affected source, or forty-five (45) days for relocation of a direct affected source, prior to the time that such construction, modification, or relocation is commenced, the owner or operator of the source shall file with the Director permit application forms available from the Director. These applications shall contain

sufficient information as, in the judgment of the Director, will enable him to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules and regulations promulgated by the Commission. Such information may include, but not be limited to, site information, plans, descriptions, specifications, and drawings relating to the proposed construction, modification, or relocation of the direct and/or indirect affected source and the manner in which it will be operated and controlled.

- 4.03. Each permit application shall be signed by the owner or operator of the direct and/or indirect affected source, and such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, relocation, or operation of the direct and/or indirect affected source in accordance with applicable rules and regulations of the Commission.
- 4.04. Within ninety (90) days of the receipt of a permit application, for construction or modification of a direct and/or indirect affected source or for relocation of an indirect affected source, or within forty-five (45) days, for relocation of a direct affected source, the Director shall issue such permit unless he determines that the proposed construction, modification, or relocation will violate applicable emission standards, will interfere with the attainment or

maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this regulation, in which case he shall issue an order for the prevention of such construction, modification, or relocation. Failure to issue the permit or such order within the time prescribed shall be deemed a determination that such construction, modification, or relocation may proceed: provided that it is in accordance with the plans and specifications or other information required to be submitted on the application required herein.

4.05. When the Director denies a permit application for the proposed construction, modification, or relocation of any direct and/or indirect affected source, the order shall set forth his reasons with reasonable specificity.

4.06. The Director may impose any reasonable conditions as part of a granted construction, modification, or relocation permit. Such conditions may include, but not be limited to, the submission of periodic progress or operation reports, the provisions of a suitable sampling site, and the installation of pollutant monitoring devices.

**Section 5. Determination of Compliance of Direct Affected Sources  
With Commission Rules and Regulations.**

5.01. At the time a direct affected source is alleged to be in compliance with an applicable emission standard, an appropriate test consisting of visual determinations and/or conventional in-stack measurements or such other tests as the Director may specify shall be conducted to determine such compliance.

5.02. At the request of the Commission the owner and/or operator of a direct affected source shall install such stack gas monitoring devices as the Director deems necessary to determine continuing compliance. The data from such devices shall be readily available at the source location or such other reasonable location that the Director may specify. At the request of the Director, or his duly authorized representative, such data shall be made available for inspection or copying. Failure to promptly provide such data shall constitute a violation of this regulation.

**Section 6. Public Review Procedures for Direct Affected Sources.**

6.01. The Director shall maintain for public review a permit application list for direct affected sources containing the name of the applicant, the type and location of the source, and the proposed startup date. No permit shall be issued to any applicant until he has been on the permit application list for at least thirty (30) days for construction or modification, or twenty-five (25) days for relocation.

6.02. At the same time that an application for a direct affected source permit is filed with the Director, the applicant shall also place a legal advertisement in the paper of general circulation in the area where the source is located. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, and the proposed startup date.

6.03. During the time periods specified in Sub-Section 6.01 that an applicant's name appears on the direct affected source permit application list, the Director will receive and evaluate written comments relating to the permit application.

**Section 7. Public Review Procedures for Indirect Affected Sources.**

7.01. Within thirty (30) days after receipt, by the Director, of a satisfactorily completed application for a permit for an indirect affected source, the Director shall place a legal advertisement in a paper of general circulation in the area where the source is located. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, the proposed startup date, and shall notify the public of its opportunity to comment upon the proposed construction, modification, or relocation and the public availability of information pertinent to the application.

7.02. The Director, at the time of notifying the public of its opportunity to comment upon the proposed construction, modification, or relocation of an indirect affected source, shall make available for public review in at least one location in the affected region such information as may be provided by the owner or operator that is not of a proprietary nature, as well as the Director's analysis of the effect of the indirect affected source on air quality, and his intention to grant or deny a permit.

7.03. Public comments submitted within thirty (30) days after the Director's public notification of an opportunity for comment upon a proposed construction, modification, or relocation of an indirect affected source shall be considered by the Director before making his final decision upon the application.

7.04. The Director shall take final action on an application for construction, modification, or relocation of an indirect affected source within thirty (30) days after the close of the public comment period.

Section 8. Public Meetings.

8.01. Public meetings to receive comments on direct and/or indirect permit applications will be held when the Director deems it appropriate or when substantial interest is expressed, in writing, by a significant number of persons who might reasonably be expected to be affected by the source in question.

8.02. The Director, the Commission, or a duly authorized employee of the Commission shall preside over such meetings and insure that all interested parties have ample opportunity to present comments. Such meetings shall be held at a convenient place as near as practicable to the location of the proposed source.

8.03. At a reasonable time prior to such meetings, the Director shall provide appropriate information to news media in the area where the proposed source is to be located.

**Section 9. Permit Transfer, Cancellation, and Responsibility.**

9.01. A permit shall not be transferable.

9.02. The Director will cancel or suspend a permit if, after six (6) months from the date of issuance the holder of the permit can not provide the Director, at the Director's request, with written proof of a good faith effort that such construction, modification, or relocation has commenced. Such proof shall be provided not later than thirty (30) days after the Director's request.

9.03. The Director may cancel or suspend a permit if the plans and specifications upon which the approval was based and/or the conditions established in the permit are not adhered to.

9.04. Possession of a permit does not relieve any person of the responsibility of complying with any and all applicable rules or regulations of the Commission or any other governmental agency.

Section 10. Conflict With Other Rules or Regulations.

10.01. 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 11. Effective Date.

Regulation XIII (1974) shall become effective June 1, 1974, and shall supersede Regulation XIII (1972) which was adopted by the West Virginia Air Pollution Control Commission on the 5th day of May, 1972, and became effective June 15, 1972, and was filed with the Secretary of State May 11, 1972.

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Regulation XIII as adopted on the 19th day of April, 1974.



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

April 29, 1974

FILED IN THE OFFICE  
EDGAR F. HEISKELL III  
SECRETARY OF STATE  
THIS DATE 4/29/74

The Honorable Edgar F. Heiskell, III  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25311

Dear Mr. Heiskell:

Attached are the original and one copy of Regulation XIII-  
"Permits for Construction, Modification, or Relocation of Stationary  
Sources of Air Pollutants, and Procedures for Registration and  
Evaluation" - for file in your office as required by law.

The regulation was adopted by the West Virginia Air  
Pollution Control Commission at their meeting on April 19, 1974, and  
becomes effective June 1, 1974, and shall supersede Regulation XIII  
(1972) which was adopted by the West Virginia Air Pollution Control  
Commission on the 5th day of May, 1972, and became effective June  
15, 1972, and was filed with the Secretary of State May 11, 1972.

Sincerely yours,

Carl G. Beard, II  
Director

CGB/bam

Attachments (2)

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS  
Air Pollution Control Commission

Chapter 16-20  
Series XIII  
(1974)

FILED IN THE OFFICE  
EDGAR F. HEISWELL III  
SECRETARY OF STATE  
THIS DATE 4/29/74

**Subject: Regulation XIII - Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation.**

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**Section 1. Intent and Purpose.**

- 1.01. To insure the attainment and maintenance of West Virginia's primary and secondary ambient air quality standards; to protect the difference between the present air quality and the secondary standards in areas of high air quality; and to insure compliance with West Virginia's emission standards, it is the intent of the Commission to register and evaluate sources of air pollutants and to preclude the construction, modification, or relocation of any direct and/or indirect affected source(s) in any locality, in which the establishment of such source(s) may interfere with the attainment or maintenance of these standards, or which would lower the air quality in any area unless it has been clearly demonstrated to the Commission that such change is justifiable as a result of necessary economic or social development and will not result in a statutory air pollution.

The purpose of this regulation is to set forth the procedures for registration and reporting, and the criteria for obtaining a permit to construct a new direct and/or indirect affected source or to modify or relocate an existing direct and/or indirect affected source within the State of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this regulation. Sources covered by this regulation are termed a direct or indirect "affected source" as herein defined.

Section 2. Definitions.

- 2.01. "Air Pollutants" shall mean solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.
- 2.02. "Discharge" shall refer to the release, escape, or emission of air pollutants into the air.
- 2.03. "Air Pollution", 'statutory air pollution', shall have the meaning ascribed to it in Section Two of Chapter Sixteen, Article Twenty of the Code of West Virginia, as amended.
- 2.04. "Commission" shall mean the West Virginia Air Pollution Control Commission.
- 2.05. "Director" shall mean the director of the West Virginia Air Pollution Control Commission.

- 2.06. "Person" shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.
- 2.07. "Construction" shall mean the fabrication, erection, or installation of a direct or indirect affected source. For the purposes of this regulation, an expansion of an existing direct affected source which increases the amount of any discharge or results in any new discharge shall be considered construction.
- 2.08. "Modification" for the purposes of this regulation is defined as follows:
- (a) "Direct Affected Source Modification" shall mean any physical change in, or change in the method of operation of, an existing direct affected source which increases the amount of any discharge from such existing source or results in any new discharge from such existing source, for which the Commission has promulgated an emission or ambient air quality standard. However, the following actions shall not constitute a modification of a direct affected source:
- (1) An expansion of an existing direct affected source;
  - (2) Routine maintenance, repair, and replacement;

(3) An increase in hours of operation;

(4) An increase in the production rate if such increase does not exceed the design capacity of the affected source; or

(5) Use of an alternative fuel or raw material, provided that prior to the effective date of this regulation the affected source is designed to accommodate such alternative use without increasing emissions.

(b) "Indirect Affected Source Modification":

(1) Any change in a parking facility located in a Standard Metropolitan Statistical Area which increases the parking capacity of such facility by more than 500 cars;

(2) Any change in a parking facility located outside of a Standard Metropolitan Statistical Area which increases the parking capacity of such facility by more than 1,000 cars;

(3) Any change which is predicted by a method approved by the Director to increase the average annual daily traffic volume on a road or highway section located within a Standard Metropolitan Statistical Area by 10,000 vehicles per day or more within ten (10) years of modification; or

(4) Any change in an airport which is predicted by a method approved by the Director to result within ten (10) years of modification in an increase of 50,000 or more takeoffs or

landings per year by any scheduled air carriers over the existing volume of take-offs or landings, or increase of 1,600,000 or more passengers per year.

2.09. "Relocation" shall mean the physical movement of a direct and/or indirect affected source outside its existing plant boundaries.

2.10. "Commenced" shall mean that an owner or operator has undertaken a continuous program of physical site preparation, construction, modification, or relocation, or that a binding general construction contract has been entered into which obligates one party to such contract to perform the physical work involved in such program of construction, modification, or relocation of a direct and/or indirect affected source. Interruptions resulting from acts of God, strikes, or other matters beyond the control of the owner shall be disregarded in determining whether a construction, modification, or relocation program is continuous.

2.11. "Direct Affected Source"

(a) Except for the exemptions of Sub-Section 2.11(b), for the purpose of this regulation, a 'direct affected source' shall mean:

(1) Any stationary source subject to any emission regulation promulgated by the Commission; or

(2) Any stationary source which discharges, or may discharge, more than six (6) pounds per hour of any air pollutant for which

the Commission has promulgated an ambient air quality standard; or

(3) Any source discharging, or which may discharge, a hazardous pollutant(s) as defined by the Commission.

(b) However, for the purpose of this regulation, a 'direct affected source' shall not mean:

(1) Any fuel burning unit having a heat input under ten (10) million B. T. U. 's (British Thermal Units) per hour;

(2) Any internal combustion engines;

(3) Any normal and necessary operation associated with the production of agricultural products grown on the premises or livestock, dogs, cats, and poultry grown on the premises; or

(4) Any other source of minor significance as may be specified by the Commission.

2.12. "Indirect Affected Source"

For the purpose of this regulation an "indirect affected source" shall mean:

(a) Any new parking area located in a Standard Metropolitan Statistical Area with a capacity of 1,000 or more cars;

(b) Any new parking area located outside of a Standard Metropolitan Statistical Area with a capacity of 2,000 cars or more;

(c) Any new airport which is predicted by a method approved

by the Director to have 50,000 or more take-offs or landings per year by regularly scheduled air carriers, or use by 1,600,000 or more passengers per year; or,

(d) Any new road or highway section located inside a Standard Metropolitan Statistical Area which is predicted by a method approved by the Director to have an average annual daily traffic volume within ten (10) years of construction of 20,000 or more vehicles per day.

2.13. "Standard Metropolitan Statistical Area" shall mean any county or group of counties which contain at least one city of 50,000 inhabitants or more, or twin cities with a combined total population of 50,000 inhabitants or more, and any contiguous counties which are socially and economically integrated with the central city.

2.14. "Stationary Source" shall mean, for the purpose of this regulation, any building, structure, facility, or installation, or combination thereof, which may directly emit or indirectly cause to be emitted any air pollutant. Two designated classes of stationary sources shall be "direct affected source" and "indirect affected source".

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

Sixteen, Article Twenty, Section Two of the Code of West Virginia, 1931, as amended, and any rules or regulations promulgated thereunder.

Section 3. Registration and Report Requirements for Direct Affected Sources on which Construction, Modification, or Relocation Commenced Prior to the Effective Date of this Regulation.

3.01. Not later than one hundred twenty (120) days after the effective date of this regulation all persons owning and/or operating a direct affected source(s) shall register such source(s) with the Commission unless such source(s) has been previously registered.

The information required for registration shall be determined and provided in the manner and on such forms as specified by the Director. Registration forms shall be requested from the Director, or his duly authorized representative, by the owner and/or operator of such source(s).

3.02. The owner and/or operator of such a direct affected source shall maintain data on the operation of the source and the Director, or his duly authorized representative may request reports on such data in such reasonable manner and detail as the Director may specify. If requested, such reports shall be filed within fifteen (15) days of the end of the established reporting period. However, reports on such data shall not exceed one (1) per month.

Section 4. Permit Application and Report Requirements for Direct and/or Indirect Affected Sources on which Construction, Modification, or Relocation is Commenced After the Effective Date of this Regulation.

- 4.01. No person shall cause, suffer, allow, or permit the construction, modification, or relocation of any direct and/or indirect affected source(s) to be commenced after the effective date of this regulation without notifying the Director of such intent and obtaining a permit(s) to so construct, modify, or relocate the direct and/or indirect affected source(s) as herein provided. Where an indirect affected source is constructed, modified, or relocated in increments which individually are not subject to the provisions of this regulation, all such increments occurring since the effective date of this regulation shall be added together for determining the applicability of this regulation.
- 4.02. Not later than ninety (90) days, for construction or modification of a direct and/or indirect affected source or for relocation of an indirect affected source, or forty-five (45) days for relocation of a direct affected source, prior to the time that such construction, modification, or relocation is commenced, the owner or operator of the source shall file with the Director permit application forms available from the Director. These applications shall contain

sufficient information as, in the judgment of the Director, will enable him to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules and regulations promulgated by the Commission. Such information may include, but not be limited to, site information, plans, descriptions, specifications, and drawings relating to the proposed construction, modification, or relocation of the direct and/or indirect affected source and the manner in which it will be operated and controlled.

- 4.03. Each permit application shall be signed by the owner or operator of the direct and/or indirect affected source, and such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, relocation, or operation of the direct and/or indirect affected source in accordance with applicable rules and regulations of the Commission.
- 4.04. Within ninety (90) days of the receipt of a permit application, for construction or modification of a direct and/or indirect affected source or for relocation of an indirect affected source, or within forty-five (45) days, for relocation of a direct affected source, the Director shall issue such permit unless he determines that the proposed construction, modification, or relocation will violate applicable emission standards, will interfere with the attainment or

maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this regulation, in which case he shall issue an order for the prevention of such construction, modification, or relocation. Failure to issue the permit or such order within the time prescribed shall be deemed a determination that such construction, modification, or relocation may proceed: provided that it is in accordance with the plans and specifications or other information required to be submitted on the application required herein.

4.05. When the Director denies a permit application for the proposed construction, modification, or relocation of any direct and/or indirect affected source, the order shall set forth his reasons with reasonable specificity.

4.06. The Director may impose any reasonable conditions as part of a granted construction, modification, or relocation permit. Such conditions may include, but not be limited to, the submission of periodic progress or operation reports, the provisions of a suitable sampling site, and the installation of pollutant monitoring devices.

**Section 5. Determination of Compliance of Direct Affected Sources**  
**With Commission Rules and Regulations.**

5.01. At the time a direct affected source is alleged to be in compliance with an applicable emission standard, an appropriate test consisting of visual determinations and/or conventional in-stack measurements or such other tests as the Director may specify shall be conducted to determine such compliance.

5.02. At the request of the Commission the owner and/or operator of a direct affected source shall install such stack gas monitoring devices as the Director deems necessary to determine continuing compliance. The data from such devices shall be readily available at the source location or such other reasonable location that the Director may specify. At the request of the Director, or his duly authorized representative, such data shall be made available for inspection or copying. Failure to promptly provide such data shall constitute a violation of this regulation.

**Section 6. Public Review Procedures for Direct Affected Sources.**

6.01. The Director shall maintain for public review a permit application list for direct affected sources containing the name of the applicant, the type and location of the source, and the proposed startup date. No permit shall be issued to any applicant until he has been on the permit application list for at least thirty (30) days for construction or modification, or twenty-five (25) days for relocation.

6.02. At the same time that an application for a direct affected source permit is filed with the Director, the applicant shall also place a legal advertisement in the paper of general circulation in the area where the source is located. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, and the proposed startup date.

6.03. During the time periods specified in Sub-Section 6.01 that an applicant's name appears on the direct affected source permit application list, the Director will receive and evaluate written comments relating to the permit application.

**Section 7. Public Review Procedures for Indirect Affected Sources.**

7.01. Within thirty (30) days after receipt, by the Director, of a satisfactorily completed application for a permit for an indirect affected source, the Director shall place a legal advertisement in a paper of general circulation in the area where the source is located. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, the proposed startup date, and shall notify the public of its opportunity to comment upon the proposed construction, modification, or relocation and the public availability of information pertinent to the application.

- 7.02. The Director, -at the time of notifying the public of its opportunity to comment upon the proposed construction, modification, or relocation of an indirect affected source, shall make available for public review in at least one location in the affected region such information as may be provided by the owner or operator that is not of a proprietary nature, as well as the Director's analysis of the effect of the indirect affected source on air quality, and his intention to grant or deny a permit.
- 7.03. Public comments submitted within thirty (30) days after the Director's public notification of an opportunity for comment upon a proposed construction, modification, or relocation of an indirect affected source shall be considered by the Director before making his final decision upon the application.
- 7.04. The Director shall take final action on an application for construction, modification, or relocation of an indirect affected source within thirty (30) days after the close of the public comment period.

Section 8. Public Meetings.

- 8.01. Public meetings to receive comments on direct and/or indirect permit applications will be held when the Director deems it appropriate or when substantial interest is expressed, in writing, by a significant number of persons who might reasonably be expected to be affected by the source in question.

8.02. The Director, the Commission, or a duly authorized employee of the Commission shall preside over such meetings and insure that all interested parties have ample opportunity to present comments. Such meetings shall be held at a convenient place as near as practicable to the location of the proposed source.

8.03. At a reasonable time prior to such meetings, the Director shall provide appropriate information to news media in the area where the proposed source is to be located.

**Section 9. Permit Transfer, Cancellation, and Responsibility.**

9.01. A permit shall not be transferable.

9.02. The Director will cancel or suspend a permit if, after six (6) months from the date of issuance the holder of the permit can not provide the Director, at the Director's request, with written proof of a good faith effort that such construction, modification, or relocation has commenced. Such proof shall be provided not later than thirty (30) days after the Director's request.

9.03. The Director may cancel or suspend a permit if the plans and specifications upon which the approval was based and/or the conditions established in the permit are not adhered to.

9.04. Possession of a permit does not relieve any person of the responsibility of complying with any and all applicable rules or regulations of the Commission or any other governmental agency.

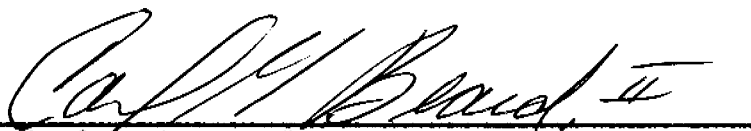
**Section 10. Conflict With Other Rules or Regulations.**

10.01. 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 11. Effective Date.**

Regulation XIII (1974) shall become effective June 1, 1974, and shall supersede Regulation XIII (1972) which was adopted by the West Virginia Air Pollution Control Commission on the 5th day of May, 1972, and became effective June 15, 1972, and was filed with the Secretary of State May 11, 1972.

**The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Regulation XIII as adopted on the 19th day of April, 1974.**



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