WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: WV Department of Environmental Protection, Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 29, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Department of Environmental Protection
Division of Air Quality

601 57th Street, S.E.

Charleston, West Virginia 25304

LEGISLATIVE RULE TITLE: 45CSR13 - Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation

1. Authorizing statute(s) citation W. Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 9, 2008

b. What other notice, including advertising, did you give of the hearing?

Public Notice placed on Department of Environmental Protection's web site, distributed via the agency's mailing list, and in a Class I legal ad published in the Charleston Newspapers.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

Public Hearing/Comment Period Ended - August 11, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received ______

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 29, 2008

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304
Phone: (304) 926-0499 ext. 1966

Fax: (304) 926-0488

John.A.Benedict@wv.gov

g. **<u>IF DIFFERENT</u> FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

BRIEFING DOCUMENT

Rule Title: 45CSR13 - "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation"

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

Pursuant to W.Va. Code §22-5-11, this rule sets forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source and to modify a non-major stationary source. This rule also establishes the requirements for obtaining an administrative update to an existing permit, temporary permit or a general permit, and for filing notifications and maintaining records of changes not otherwise subject to the permit requirements of this rule. The rule establishes public participation requirements as well as procedures for permission to commence construction, and the transfer, suspension and revocation of permits.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

45CSR13 is part of the West Virginia State Implementation Plan approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards. As required by statute (House Bill 4438), the proposed revisions reduce the timelines for minor source air permit issuance. The revisions to the rule also allow equipment and materials to be delivered and stored onsite prior to permit issuance, as well as clarify that a Rule 13 permit is also an operating permit. A new section adds a 15-day preapproval review for permission to commence construction or modification prior to receiving a permit, provided that operation does not commence until a permit is issued. The DAQ will submit final rule 45CSR13 as a revision to the State Implementation Plan.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation; therefore, a determination of stringency is not required.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 24, 2008 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. (See attached minutes for Council's discussion).

West Virginia Department of Environmental Protection

ADVISORY COUNCIL MEETING MINUTES
Tuesday, June 24, 2008
601 57th Street, SE, Charleston, WV
West Virginia Room – 3rd Floor

IN ATTENDANCE:

Members of the Council:

Jackie Hallinan
Karen Price
Bill Raney
Rick Roberts

DEP:

Randy Huffman	Cabinet Secretary
Lisa McClung	Deputy Cabinet Secretary and Director, Division of Water and Waste Management
Raymond Franks II	General Counsel
Karen Watson	Associate General Counsel
Kathy Cosco	Communications Director
Pam Nixon	Environmental Advocate
Ken Politan	Mining & Reclamation
Lewis Halstead	Mining & Reclamation
Charlie Sturey	Mining & Reclamation
Carroll Cather	Water & Waste Management
Don Martin	Land Restoration
Brian Long	Water & Waste Management
Dan Arnold	Water & Waste Management
Mike Zeto	Environmental Enforcement
Terrie Sangid	Water & Waste Management
Jim Mason	Air Quality
Mike Johnson	Water & Waste Management
Kathy Emery	Water & Waste Management
Scott Mandirola	Water & Waste Management

Visitors:

Tom Boggs	Chamber of Commerce
Don Garvin	WV Environmental Council
Ruth Lemmon	WV Auto/Truck Dealers Association

OLD BUSINESS:

Secretary Huffman called the meeting to order at 1:35 p.m., and he announced that Members Lisa Dooley and Larry Harris would not be attending. On motion made by Mr. Raney and seconded by Ms. Hallinan, the Council approved the minutes from the March 18, 2008 meeting. Secretary Huffman then ceded the floor to Mr. Franks.

NEW BUSINESS:

Mr. Franks noted that for the 2009 regular legislative session, DEP was proposing changes to 20 rules, grouped by Division for presentation to the Council. Depending on who had shepherded the rule through its initial drafting, either Mr. Franks or Ms. Watson would lead the discussion, with program administrators available to assist in answering the Council's questions.

Ms. Watson presented 60 CSR 3, the "Brownfields" Rule. Ms. Watson explained that the Rule was currently pending before the Secretary of State for authorization as an emergency rule, and that the proposed changes included adjustments to the "de minimis" table and enhancing DEP's flexibility in obtaining risk assessments.

Ms. Price referred to a letter recently sent to DEP seeking clarification of the Rule's provisions concerning land use covenants and long-term maintenance agreements. Secretary Huffman stated that the letter would be retrieved and the issue noted for further consideration by the agency.

Mr. Raney inquired whether the Council could recommend changes to the rules as presented. Ms. Watson responded in the affirmative. Mr. Raney then asked whether written comments, such as those submitted by Mr. Harris prior to the meeting, would be appended to the minutes. Mr. Franks responded in the negative, and Ms. Watson expounded that Mr. Harris's comments would be summarized and addressed orally during the discussion of the particular rules involved.

Mr. Franks then presented 38 CSR 2, the Surface Mining Reclamation Rule. Mr. Franks explained that the proposed changes would expand the Secretary's oversight of "approved persons" authorized to render technical certifications contained within mining permit applications, and would clarify certain collateral activities as being within the scope of requests for incidental boundary revisions to existing permits. Mr. Franks also noted that the proposed Rule would set forth more relevant and exacting criteria for the Secretary to consider in evaluating applications for revisions.

Mr. Raney inquired generally about the provisions with respect to approved persons. Secretary Huffman replied that the increased oversight is necessary to improve the initial quality of the permit applications, such that the delays occasioned by subsequent corrections would be reduced or eliminated. Mr. Raney asked whether approved persons could include anyone other than engineers, and Mr. Halstead responded that the definition extended to surveyors and geologists. Mr. Raney noted the need to establish a procedure for suspension or revocation to limit the agency's unfettered discretion, to which Secretary Huffman and Mr. Franks replied that the Rule provided for notice and hearing prior to curtailing the privileges of anyone on the approved-person list.

Ms. Watson presented 47 CSR 30, establishing NPDES requirements for coal mining facilities. Ms. Watson explained that the proposed changes were relatively minor, designed to enhance consistency with the non-coal rule, to allow for digital signatures, and to permit correction of clerical errors.

The Council then considered the Air Quality rules. Mr. Franks presented 45 CSR 1 and 45 CSR 26, relating to control and reduction of nitrogen oxides from, respectively, non-electric and electric generating units, the latter by means of a budget trading program. The rules are to be repealed in their entireties, and Mr. Mason explained that both are being subsumed within the Clean Air Interstate Rule program.

Mr. Franks then presented 45 CSR 8, the Ambient Air Quality Rule. Mr. Franks explained that the 1-hour primary and secondary ozone standards were being replaced with 8-hour standards, with the maximum tolerance being reduced slightly. Mr. Raney inquired as to the practical effect of the proposed change, particularly with regard to whether non-compliance areas within the State might be expanded. Mr. Mason replied that an expansion might occur, but that it was difficult to predict at this early stage. Mr. Mason added that the time-period increase would inevitably lead to more accurate measurements.

Ms. Watson presented 45 CSR 13, governing permits for constructing and modifying non-major stationary sources of air pollutants. Ms. Watson explained that the Rule was being amended to reflect the recent statutory changes reducing the lag time for issuing permits and authorizing certain pre-permit construction. It was noted that Mr. Harris had submitted in writing his concern that courts would be loath to enforce agency cease-and-desist orders based on defects discovered during the permitting process after construction had already begun. Ms. Watson pointed out that the statute had been carefully crafted to avoid facile invocation of detrimental reliance, with Mr. Franks observing that the Rule strove to conform to the statute. Ms. Price wondered whether one or more of the timeframe provisions included within the existing Rule had been inadvertently omitted from the proposed version. Ms. Watson responded that the Rule had been carefully checked for completeness, but that she would once again verify the language to assure its accuracy.

Mr. Franks presented 45 CSR 14, governing permits for constructing and significantly modifying major stationary sources of air pollutants. Mr. Franks explained that references to pollution control projects and clean units were deleted in accordance with a federal appellate court decision vacating those provisions.

Mr. Franks went on to present 45 CSR 16, 45 CSR 25, and 45 CSR 34, relating respectively to performance standards for new stationary sources, pollution from hazardous waste treatment, storage, and disposal facilities, and emission standards for hazardous air pollutants. Mr. Mason noted that the changes incorporate revisions to the Rules' federal counterparts, except that some of the new standards were not incorporated within 45 CSR 34, because they constituted unfunded mandates. Mr. Garvin was recognized, and he asked whether the failure to incorporate equated to a lack of regulation. Mr. Mason responded in the negative, explaining that the monitoring and regulation would be performed by the federal government. Mr. Garvin inquired as to the affected industries, and Mr. Mason referred to a list including smaller gas facilities and paint-stripping shops.

Ms. Watson presented 45 CSR 37, detailing the budget trading program to reduce mercury emissions. Ms. Watson explained that the rule is being repealed as inconsistent with a federal appellate court decision, pending alternative action by the EPA. Mr. Garvin inquired whether the Rule repealed two years ago would be reinstated upon revocation of the current version, to which Ms. Watson and Mr. Franks replied that it would not, if there had indeed been a previous rule in place, which was somewhat in question. Mr. Mason explained that mercury emissions would be monitored and regulated as usual, except that budget trading would not be available as a method of reduction. He also stated that there have been discussions on a national level as to whether to reinstate the federal mercury monitoring requirements.

The Council then turned its attention to the Water and Waste Management Rules. Ms. Watson presented 33 CSR 20, governing hazardous waste management systems. Ms. Watson explained that the Rule incorporated by reference its federal counterpart, the most salient change to which is its attempt to reduce disposal by permitting facilities to stage hazardous waste for three days pending recycling. Mr. Raney asked whether three days was sufficient time, and Mr. Cather responded in the affirmative.

Mr. Franks presented 33 CSR 24, the Hazardous Waste Management Fee Rule. Mr. Franks explained that increases to the fee assessments are necessary to sustain the underlying Fund by ensuring sufficient matching revenue for federal grants. Ms. Price indicated her belief that, as part of the legislative compromise extending the fee's duration, no increases would be forthcoming until completion and review of the Fund's legislative audit. Secretary Huffman responded that the preliminary audit findings in no way indicate any misallocation within the Fund or contravene the agency's determination that fee increases are necessary. Ms. Lemmon was recognized, and she commented that the proposed increase was unfair to automobile and truck dealers, as well as other small generators. Ms. Lemmon suggested that a study be done to identify the industries causing DEP to incur program costs, with fee assessments to be made proportionately.

Ms. Watson presented 33 CSR 22 and 47 CSR 56, governing the assessment of civil administrative penalties for, respectively, hazardous and solid waste violations and violations relating to groundwater. Ms. Watson explained that the Rules were being modified for the first time since their initial promulgation, with the purpose of clarifying their application by listing additional factors to be considered in calculating penalties, providing ratings examples, and expanding facility categories.

Ms. Watson then presented 47 CSR 31, addressing the State Water Pollution Control Revolving Fund. Ms. Watson explained that the proposed changes include the creation of a state review process for sewer projects in lieu of a wholesale adoption of the federal requirements. Mr. Roberts observed that many of the eligibility criteria would be deleted, but Ms. Emery assured the Council that inasmuch as the criteria were not being uniformly met, the deletion would have no practical effect on the Fund's administration. Ms. Watson advised Mr. Roberts that if he continued to have concerns upon further review, he should submit written suggestions for changes during the formal comment period.

Mr. Franks presented 47 CSR 32, governing the certification of laboratories conducting analyses of waste and wastewater. Mr. Franks explained that the proposed changes are designed to modernize outdated procedures and protocols that have remained constant since 1995, and to increase program funding through increased certification fees and a new application fee. Mr. Raney asked whether the new fees would render the program self-sustaining, and Mr. Arnold replied that it would for the time-being. In response to further inquiry, Mr. Arnold stated that DEP conducts annual, on-site audits of commercial and industrial labs, with municipal labs typically audited every two years, depending on the experience of the support personnel.

Ms. Watson presented 47 CSR 34, the Dam Safety Rule. Ms. Watson explained that the Rule is being extensively augmented to govern disbursement and use of a new Revolving Fund to finance repair and rehabilitation of deficient dams. Secretary Huffman commented that it appeared imminent that the Legislature would approve a transfer of $350,000 from excess general revenue as seed money for the Fund.

Lastly, Ms. Watson presented 47 CSR 2, the Water Quality Standards Rule. Ms. Watson explained that the proposed revisions are designed to clarify the definition of Category A use, while providing specific standards to be applied in the permitting process to determine in a more streamlined fashion whether the use is unsuitable in cases of insufficient flow and hydrologic modification. Mr. Raney commented that the Category A determination process has always been a significant problem for the coal industry. Ms. Price also agreed for her members. Mr. Garvin noted that the environmental community had expressed some initial concern regarding the proposed streamlining mechanisms, but that there was some general support for taking the matter out of the legislative arena. Mr. Huffman affirmed that the revisions are designed solely for the benefit of the regulated public and that the revisions must include the clarification that Category A applies statewide.

Ms. Watson reported that the rules will proceed to be filed with the Secretary of State, some perhaps as early as the week following the Council meeting, and that some will have an extended 45-day comment period.

Mr. Franks requested closing comments from Council members and from the public. Following the cessation of discussion, Mr. Franks reminded the Council that the next meeting is scheduled for 1:30 p.m. on September 9, 2008.

Secretary Huffman declared the meeting adjourned at 3:25 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR13 – Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE

Charleston, WV 25304

FILED IN THE OFFICE OF THE SECRETARY OF STATE THIS DATE 7/11/08 ADMINISTRATIVE LAW DIVISION

Phone Number: 926-0499 ext. 1237 Email: tmowrer@wvdep.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Pursuant to House Bill 4438, the Department of Environmental Protection, Division of Air Quality, is proposing these changes in the air permitting program reducing statutory timelines for permit issuance and adding a 15-day preapproval review to commence construction prior to receiving a permit. An increase in spending authority is necessary to fund additional FTEs to meet these reduced statutory timelines, as well as the additional 15-day review.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR

Effect of Proposal	2009 Increase/Decrease (use "-")	2010 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	$ 62,142	280,761	280,761
Personal Services	62,142	322,361	322,361
Current Expenses	0	0	0
Repairs & Alterations	0	0	0
Assets	0	0	0
Equipment	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	41,600	41,600

Rule Title: 45CSR13 – Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation

3. Explanation of above estimates (including long-range effect):
Please include any increase or decrease in fees in your estimated total revenues.

FY09 – Estimated technical/legal/clerical costs to support legislative rulemaking, public meeting/hearing, response to comments, guidance, implementation of new rule and personnel working under the new rule for approximately 2 months of fiscal year are 1 FTE or $62,142.

Full implementation is expected to occur in FY10. Estimated technical/legal/clerical costs to fully implement the program are approximately 4.1 FTEs or $322,361. Potential revenue from new rule is estimated at $41,600 (208 eligible sources at $200 per preapproval review).

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7/11/08

Signature of Agency Head

TITLE 45
LEGISLATIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
~~DIVISION OF~~ AIR QUALITY

SERIES 13
PERMITS FOR CONSTRUCTION, MODIFICATION, RELOCATION AND OPERATION OF STATIONARY SOURCES OF AIR POLLUTANTS, NOTIFICATION REQUIREMENTS, ADMINISTRATIVE UPDATES, TEMPORARY PERMITS, GENERAL PERMITS, PERMISSION TO COMMENCE CONSTRUCTION, AND PROCEDURES FOR EVALUATION

§45-13-1. General.

1.1. Scope. -- The purpose of this rule is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, ~~and~~ to relocate non-major stationary sources within the state of West Virginia, and to set forth procedures to allow facilities to commence construction in advance of permit issuance. Such construction, modification, ~~or~~ relocation and operation without a required permit is a violation of this rule. This rule also establishes the requirements for obtaining an administrative update to an existing permit, a temporary permit or a general permit registration, and for filing notifications and maintaining records of changes not otherwise subject to the permit requirements of this rule. This rule does not apply to nonroad engines, nonroad vehicles, motor vehicles, or other emission sources regulated under Subchapter II of the federal Clean Air Act; provided, however that the Secretary may regulate such sources pursuant to another rule promulgated for that purpose.

1.2. Authority. -- W. Va. Code §22-5-1 et seq.

1.3. Filing Date. -- ~~April 21, 2003~~.

1.4. Effective Date. -- ~~June 1, 2003~~.

1.5. Former Rules. -- This legislative rule amends and replaces 45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits and Procedures for Evaluation" which was filed on ~~May 26, 2000~~April 21, 2003, and which became effective ~~June 1, 2000~~ June 1, 2003.

§45-13-2. Definitions.

2.1. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as described below:

2.1.a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2)-year period which precedes the particular date and which is representative of normal source operation. The Secretary may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2.1.b. The Secretary may presume that source-specific allowable or permitted emissions for the unit are equivalent to the actual emissions of the unit.

2.1.c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date or the actual emissions of an existing source with similar operations and production levels at the Secretary's discretion.

2.2. "Administrative update" shall mean any revision of a current and valid permit or general permit registration which meets the provisions of section 4.

2.3. "Clean Air Act" ("CAA") means 42 U.S.C. 7401 et seq., as amended.

2.4. "Commenced" means that an owner or operator has all necessary preconstruction approval or permits and 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 (1) party to such contract to perform the physical work involved in such program of construction, modification, or relocation of a source or emissions unit. 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 unless otherwise specifically provided within this rule.

2.5. "Construction" means any physical change or change in the method of operation (including onsite fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in an increase in the potential to emit or an increase in actual emissions of regulated air pollutants unless otherwise specifically provided within this rule.

2.6. "De minimis source" means any emissions unit listed in Table 45-13B, whether individual or a part of a common plan (i.e., a common set of new sources or physical changes in or changes in the method of operation of any existing stationary source). A "de minimis source" is deemed to have insignificant emissions and/or is not usually a source of quantifiable emissions which can be practically regulated in determining potential to emit or actual emissions for the purpose of determining whether a permit is required under this rule. Emissions to the extent quantifiable from emissions units listed in Table 45-13B do not need to be added together by the source unless otherwise required by the Secretary.

2.6.a. Unless otherwise determined by the Secretary, emissions from a de minimis source shall not be included in determining the "potential to emit" for purposes of applicability under this rule. However, in implementing the permitting program under this rule, the Secretary may require emissions information for de minimis sources for inclusion in a permit review. Sources located in nonattainment areas may not be eligible to use Table 45-13B for the pollutant or its precursors for which the area is in nonattainment. Inclusion of an emissions unit in Table 45-13B does not preclude the source's duty to comply with the W. Va. Code §22-5-1 et seq. and all applicable state and federal regulations, including 45CSR4.

2.6.b. Emissions units listed in Table 45-13B do not require any monitoring, recordkeeping or reporting unless specifically requested by the Secretary.

2.6.c. Notwithstanding any other requirements and standards of this rule, a source may use the procedures described in subsection 5.13 to petition the Secretary for a determination of regulatory applicability for a particular emissions unit that may meet the criteria for a " de minimis source" but which is not specifically listed in Table 45-13B.

2.7. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.8. "Discharge" means the release, escape, or emission of air pollutants into the air.

2.9. "Emissions unit" means any part or activity of a stationary source that emits or discharges or has the potential to discharge or emit any regulated air pollutant.

2.10. "Enforceable" means enforceable by the Secretary and U. S. EPA unless specifically designated to mean otherwise in this rule.

2.11. "EPA" or "U. S. EPA" means the United States Environmental Protection Agency.

2.12. "Existing stationary source operating permit" means a permit issued by the Secretary at the request of an owner or operator of a stationary source which establishes enforceable emission rates, operating conditions, and compliance determination procedures for that source based upon applicable rules and terms agreed to by the Secretary and the owner or operator.

2.13. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

2.14. "Hazardous air pollutant" or "HAP" means any substance listed pursuant to section 112(b) of the Clean Air Act.

2.15. "Major modification" shall have the meanings ascribed to this term in 45CSR14 or 45CSR19 depending upon the attainment status, with respect to the National Ambient Air Quality Standards, of the area in which a particular stationary source is located.

2.16. "Major stationary source" shall have the meaning ascribed to this term in 45CSR14, 45CSR19, or 45CSR30.

2.17. "Modification" for the purpose of this rule means any physical change in or change in the method of operation of any existing stationary source, excluding any emissions unit which meets or falls below the criteria delineated in Table 45-13B, which:

2.17.a. Results in an emissions increase of six (6) pounds per hour and ten (10) tons per year or more, or more than 144 pounds per calendar day, of any regulated air pollutant;

2.17.b. Results in an emissions increase of 2 pounds per hour or 5 tons per year of hazardous air pollutants considered on an aggregated basis;

2.17.c. Results in an increase in emissions of an air pollutant listed in Table 45-13A of 10 percent or more of the amount set forth in Table 45-13A at a facility which, prior to the physical change or change in method of operation, has the potential to emit the air pollutant at or above the amount set forth in Table 45-13A; provided that nothing in this subdivision shall affect the facility's obligation to comply with 45CSR27;

2.17.d. Results in an increase in emissions of any air pollutant listed in Table 45-13A that would in turn result in total emissions of the air pollutant at the stationary source equal to or greater than the amounts in Table 45-13A; or

2.17.e. Results in any regulated air pollutant emissions increase for which the owner or operator of a source voluntarily chooses to obtain a modification permit pursuant to this rule, even though the owner or operator is not otherwise required to do so.

2.17.f. The following actions, however, shall not constitute a modification of a stationary source:

2.17.f.1. Installation or replacement of air pollution control equipment, provided that such new equipment is at least as effective in the control of air pollutant emissions as any equipment replaced and that no new air pollutant discharge results from its installation;

2.17.f.2. Routine maintenance, repair, and replacement (excluding such activities that are subject to new source performance standards under 45CSR16);

2.17.f.3. An increase in hours of operation unless a limitation has been explicitly placed upon hours of operation in an applicable permit or order;

2.17.f.4. An increase in throughput or

production rate if such increase does not exceed the design capacity of the source or emissions unit, or increase emissions above the levels provided in this paragraph and there is no explicit limitation of production rate or throughput in an applicable permit or order; or

2.17.f.5. Use of an alternative fuel or raw material, provided that the source is designed to accommodate such alternative use without increasing emissions above the levels provided in this paragraph and such usage is not prohibited by an applicable permit or order.

2.17.f.6. An emissions reduction for each regulated pollutant from current actual emissions to new potential emissions from any replacement of a natural gas compressor engine not previously required to obtain a permit under this rule with another natural gas compressor engine: provided that the owner or operator of the source shall notify the Secretary of such replacement and the emissions reduction within ten (10) working days of the replacement.

2.18. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, The United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, association or business entity of whatever nature.

2.19. "Potential to emit" means the maximum design capacity of a stationary source or emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source or emissions unit 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 if the limitation or the effect it would have on emissions is enforceable by the Secretary and U. S. EPA in any permit or consent order. Secondary emissions shall not be included in any determination of a stationary sources potential to emit.

2.19.a. Notwithstanding the provisions of subsection 2.19, any natural gas compressor which is equipped with a catalytic converter which is integral to the unit shall have its potential to emit determined taking into consideration reductions achieved by the catalytic converter Said catalytic converter must be interlocked in such a way as to not allow operation of the engine without operation of the catalytic converter. The catalytic converter shall have the catalyst replaced every 45,000 hours of operation or every ten (10) years, whichever is earlier, as established by records kept by the source, unless the Secretary approves an alternative method of verifying catalyst effectiveness.

2.19.b. Upon written petition by a facility that an air pollution control device is inherent to the emission unit, the Secretary may rule on a case-by-case basis that potential to emit may be determined taking into consideration reductions achieved by the control device. "Inherent to the emission unit" shall mean that the emission unit cannot be operated without the air pollution control device being properly maintained.

2.20. "Regulated air pollutant" for the purpose of this rule means the following:

2.20.a. Nitrogen oxides (NO_x), volatile organic compounds (VOC), or particulate matter;

2.20.b. Any air pollutant for which a national ambient air quality standard has been promulgated including particulate matter (PM_{10}), sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone and lead or lead compounds;

2.20.c. Any air pollutant listed on table 45-13A;

2.20.d. Any air pollutant subject to an emission standard promulgated by the Secretary including mineral acids in 45CSR7;

2.20.e. Any air pollutant subject to a new source performance standard (NSPS) promulgated under section 111 of the Clean Air Act [including section 111(d)], which requires new and modified sources to satisfy emissions standards, work practice standards and other requirements;

2.20.f. Any of the ozone-depleting substances specified as a Class I (primarily chlorofluorocarbons) or Class II substance (hydrochlorofluorocarbons) under Title VI of the Clean Air Act; or

2.20.g. Any air pollutant subject to a standard or other requirement promulgated under section 112 of the Clean Air Act, specifically excluding air pollutants listed only in 112 (r).

2.21. "Relocation" means the physical movement of a stationary source outside the existing plant boundaries.

2.22. "Responsible official" means one of the following:

2.22.a. For a corporation or other business entity: a president, secretary, treasurer, or vice-president of the corporation or business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation or business entity, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty five ($25) million (in second quarter 1990 dollars), or (ii) a representative delegated with such authority and approved in advance by the Secretary;

2.22.b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

2.22.c. For a municipality, State, Federal, or other public entity: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of U.S. EPA); or

2.22.d. The designated representative delegated with such authority and approved in advance by the Secretary.

2.23. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a stationary source or modification, but do not come from the stationary source or modification itself. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include, but are not limited to, emissions from any off-site support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the stationary source or modification.

2.24. "Stationary source" means, for the purpose of this rule, any building, structure, facility, installation, or emission unit or combination thereof, excluding any emissions unit which meets or falls below the criteria delineated in Table 45-13B, which:

2.24.a. Is subject to any substantive requirement of an emission control rule promulgated by the Secretary;

2.24.b. Discharges or has the potential to discharge more than six (6) pounds per hour and ten (10) tons per year, or has the potential to discharge more than 144 pounds per calendar day, of any regulated air pollutant;

2.24.c. Discharges or has the potential to discharge more than two (2) pounds per hour or five (5) tons per year of hazardous air pollutants considered on an aggregated basis;

2.24.d. Discharges or has the potential to discharge any air pollutant(s) listed in Table 45-13A in the amounts shown in Table 45-13A or greater; or

2.24.e. An owner or operator voluntarily chooses to be subject to a construction or modification permit pursuant to this rule, even though not otherwise required to do so.

2.25. "Statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.26. "Volatile Organic Compounds" (VOC) means the term as defined in 40 CFR §51.100 (s).

2.27. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §§22-5-1 et seq. and any rules promulgated thereunder.

§45-13-3. Reporting Requirements for Stationary Sources.

3.1. The owner or operator of a stationary source may be required by the Secretary to collect, report and maintain data on the operation of such stationary source. The Secretary, or his duly authorized representative, may request reports of such data in a reasonable manner and detail as the Secretary may specify. If requested, such reports shall be filed within thirty (30) days of the end of the established reporting period. However, reports on such data shall not exceed one (1) per month.

§45-13-4. Administrative Updates to Existing Permits and General Permit Registrations.

4.1. Upon the request of the permittee, or with the permittee's consent, the Secretary may revise or update a valid existing permit or general permit registration issued pursuant to this rule as necessary to incorporate any administrative update identified in subsection 4.2, provided that no administrative update to a general permit registration shall be inconsistent with the terms and conditions of the applicable general permit.

4.1.a. At the Secretary's discretion a determination may be made that an applicant is not eligible for an administrative update pursuant to this section.

4.1.b. ~~Within sixty (60) days from receipt of a complete application for an administrative update, the Secretary shall take final action on any Class I request and may take final action on any Class II request~~Any final decision on an administrative update application shall be issued by the Secretary within a reasonable time not to exceed sixty calendar days after receipt of a complete application by:

4.1.b.1. Issuing the administrative update;

4.1.b.2. Issuing the administrative update with reasonable conditions in addition to those requested;

4.1.b.3. Denying the administrative update request; or

4.1.b.4. Determining that the requested change does not meet the criteria of this section and should be reviewed under other provisions of this rule or other rules of the Secretary.

4.1.c. Should the Secretary deny an administrative update request, he or she shall do so in writing, providing the reasons therefore. The denial is not subject to public notice or comment nor is it subject to appeal under W. Va. Code §§22-5-14 or 22B-1-7. Any permit which is issued as amended pursuant to this section may be appealed under W. Va. Code §§22-5-14 or 22B-1-7.

4.1.d. The Secretary may incorporate changes to a permit or general permit registration as an administrative update without providing notice to the public, provided that such permit revisions are designated as Class I administrative updates as defined in subdivision 4.2.a. Class II administrative updates as defined in subdivision 4.2.b must be noticed by the applicant at the time of application in accordance with the provisions of subsection 8.3.

4.1.e. Should the Secretary intend to make an administrative update to a permit pursuant to this section with the permittee's consent, or to make changes to the permittee's application for an administrative update, the Secretary shall provide the permittee with no less than fifteen (15) days written notice of that intent to provide an opportunity for the permittee to comment on that intent before the Secretary takes any of the actions specified in subdivision 4.1.b.

4.2. Administrative updates to a valid existing permit or general permit registration issued pursuant to this rule are authorized with respect to any change under subdivision 4.2.a or 4.2.b that does not otherwise constitute a modification as defined by this rule. No applicant shall seek an administrative update pursuant to this section to circumvent any part of this rule or any other state or federal rule or regulation. Any notification request under subsection 5.13 that the Secretary determines will require an administrative update shall comply with this section.

4.2.a. Class I administrative updates are limited to the following:

4.2.a.1. Correction of typographical errors;

4.2.a.2. Corrections or updates to mailing addresses, contact personnel or telephone numbers if contained in the permit, or change in the name of the permittee which does not involve any change in the ownership or operational control of a permitted source or unit;

4.2.a.3. Change in the construction schedule with regard to any interim schedule requirement to the extent that such a change does not interfere with any obligation under the existing permit to have pollution control equipment installed and in operation and to the extent that such a change is allowed by subsection 10.2;

4.2.a.4. Change in a permit condition to incorporate any new more stringent requirements related to an applicable rule promulgated after the existing permit was issued and that do not result in a physical change in or change in the method of operation of the source;

4.2.a.5. Change in a permit condition to incorporate any new more stringent requirements related to new information not considered at the time the existing permit was issued;

4.2.a.6. Permanent removal of equipment, not including air pollution control equipment;

4.2.a.7. Change in monitoring, recordkeeping or reporting requirements for sources which are not major sources which are determined by the Secretary to be equivalent or superior to the existing permit requirements; or

4.2.a.8. Change in a permit condition as necessary to allow changes in operating parameters, emission points, control equipment or any other aspect of a source which results in a decrease in the emission of any existing regulated air pollutant or any new regulated air pollutant.

4.2.b. Class II administrative updates are limited to the following:

4.2.b.1. Change in a permit condition as necessary to allow changes in operating parameters, emission points, control equipment or any other aspect of a source which results in an increase or no change in the emission of any existing regulated air pollutant or any new regulated air pollutant; or

4.2.b.2. Other minor changes as may be allowed on a case-by-case basis by the Secretary.

4.3. A person requesting an administrative update of a permit or general permit registration shall submit any information the Secretary may request describing the effect of the proposed change, if any, on emissions and ambient air quality from the source. The information submitted must be certified to be true, accurate and complete by a responsible official in the manner required for a permit application. Upon a determination by the Secretary that there is a potential for significant ambient air quality impact, the source may be required to submit appropriate additional information or to apply for the appropriate permit. When requested, it is the duty of the applicant to supply sufficient information to the Secretary to demonstrate there will be no significant air quality impact.

4.4. Any permittee other than a small business as defined in section 507(c) of the federal Clean Air Act which requests a Class II administrative update to a valid existing permit pursuant to this section shall submit a permit application fee of three hundred dollars ($300).

4.5. The permittee may implement the changes addressed in the request for a Class I administrative update immediately upon submittal of the request. After the permittee makes the requested Class I changes, and until the Secretary takes any of the actions specified in subdivision 4.1.b, the permittee must comply with the proposed changes to the permit. During this time period, the source need not comply with the existing permit terms and conditions it seeks to change. However, if the permittee fails to comply with its proposed permit change during this period, the existing permit terms and conditions it seeks to modify may be enforced against it. Should the permittee implement such a change immediately, the permittee will do so at its sole risk and the permittee shall not assert as any argument, including legal or equitable, in any proceeding (administrative, civil or criminal) that such action occurred.

§45-13-5. Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources.

5.1. No person shall cause, suffer, allow or permit the construction, modification, ~~or~~ relocation <u>and operation</u> of any stationary source to be commenced without notifying the Secretary of such intent and obtaining a permit to construct, modify, ~~or~~ relocate <u>and operate</u> the stationary source as required in this rule or any other applicable rule promulgated by the Secretary. Construction of a major stationary source or a major modification shall be subject to the pre-construction permit requirements of 45CSR14 or 45CSR19 depending upon the air pollutants involved and the attainment status of the area in which the source or modification would occur. A source subject to 45CSR14 or 45CSR19 is not subject to the requirements of this rule. For the purposes of this rule, the following do not constitute activities pursuant to subsections 2.4 and 2.5, and prior to obtaining a permit to construct, modify ~~or~~, relocate <u>and operate</u>, a source may:

5.1.a. Clear land;

5.1.b. Grub stumps, roots and other natural impediments to site development;

5.1.c. Excavate, grade and compact topsoil to establish temporary and final grade;

5.1.d. Dig and construct foundations and/or caissons and grade beams;

5.1.e. Demolish existing structures, provided that all activity must comply and comport with all existing state and federal regulations including, but not limited to, asbestos requirements pursuant to 45CSR15, applicable National Emission Standards for Hazardous Air Pollutants pursuant to section 112 of the Clean Air Act, applicable requirements pursuant to the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.) and applicable solid waste requirements;

5.1.f. Upgrade the utility support facilities, provided that in no instance shall these upgrades cause or contribute to new or increased emissions unto themselves or increase emissions from any other unit;

5.1.g. Construct or modify structures which are strictly office buildings, warehouses or buildings that could potentially be used for those purposes; ~~or~~

5.1.h. Order equipment and procure supplies with which an emissions unit could be composed, provided that such ordering and procuring is not in violation of any other state rule~~.~~; or

5.1.i. Receive or store on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure.

5.2. Prior to obtaining a permit to construct and operate, a source may not cause the erection or installation of an emissions unit unless granted permission under section 16.

5.3. All activities listed under subdivisions 5.1.a. through 5.1.~~h~~i. shall be conducted solely at the risk of the owner or operator of the stationary source and, in undertaking any such activities, the owner or operator shall not assert as any argument, including legal or equitable, in any proceeding (administrative, civil or criminal) that such activities or investment has occurred.

5.4. Any person proposing to construct, modify~~, or~~ relocate and operate a stationary source after the effective date of this rule shall file a complete permit application with the Secretary and shall not construct, modify~~, or~~ relocate and operate the stationary source until the Secretary issues a permit approving of the construction, modification~~, or~~ relocation and operation. The application shall contain sufficient information as, in the judgment of the Secretary, will enable the Secretary to determine whether the source construction, modification, ~~or~~ relocation and operation will be in conformance with the provisions of any applicable rules promulgated by the Secretary. 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 source, the manner in which it will be operated, maximum emission rates and emissions control equipment data.

5.5. Any person who owns or operates an existing stationary source may voluntarily request a permit to operate the stationary source under enforceable terms established in an existing stationary source operating permit issued pursuant to this rule. The owner or operator shall submit a complete permit application requesting coverage under the terms and conditions of an existing source operating permit issued in accordance with the permit application and all applicable rules of the Secretary. The issuance of existing stationary source operating permits by the Secretary shall be in accordance with all provisions of this rule including public participation provisions under section 8.

5.6. All permit applications under this rule shall be signed by a responsible official of the entity which will own or operate the stationary source. The signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, or relocation and operation of the stationary source in accordance with the permit application, permit, applicable rules promulgated by the Secretary, and W. Va. Code §22-5-1 et seq.

5.7. ~~Within one hundred eighty (180) days of the receipt of a complete permit application for construction or modification of a stationary source, within 90 days of the receipt of a complete registration application for a Class II general permit, within 60 days of the receipt of a complete application for a temporary permit, within 45 days of the receipt of a complete registration application for a Class I general permit or within forty-five (45) days of receipt of a complete application for relocation of a stationary source, the Secretary shall issue such permit or registration unless a determination is made that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment or maintenance of an applicable ambient air quality standards, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code §22-5-1 et seq., in which case an order for the prevention of such construction, modification, or relocation shall be issued. The Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship.~~ The Secretary shall issue such permit or registration unless a determination is made that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code §22-5-1 et seq., in which case an order denying such construction, modification, relocation and operation shall be issued. The Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship.

5.7.a. The Secretary shall issue a permit for all construction or modifications and operation of a stationary source within a reasonable time not to exceed ninety (90) calendar days, after the date the Secretary determines the application is complete. The Secretary may extend this time by thirty (30) calendar days to allow for public comment.

5.7.b. The Secretary shall, within a reasonable time not to exceed forty-five (45) days calendar days after the date the Secretary determines that an application is complete, issue a registration under a general permit, unless he or she determines that the proposed construction, modification, relocation and operation will not be in accordance with this rule.

5.7.c. The Secretary shall, within a reasonable time not to exceed forty-five (45) calendar days after receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she determines that the proposed construction, modification, relocation and operation will not be in accordance with this rule.

5.8. The Secretary shall complete a review of any application for an existing stationary source operating permit within one hundred eighty (180) days of receipt of a complete application and either issue an operating permit or deny coverage under an existing stationary source operating permit if a determination is made that the source or some portion thereof does not comply with applicable rules of the Secretary or if the Secretary determines that acceptable compliance determination provisions cannot be incorporated to satisfy permit terms requested by the permit applicant.

5.9. The Secretary shall review all permit applications for completeness within thirty (30) days from receipt and notify the applicant in writing as to whether the application is complete or specify any information required. Any determination of completeness or lack thereof shall not relieve the permit applicant of the requirement to subsequently submit, in a timely manner, any additional or corrected information deemed by the Secretary to be necessary for permit or general permit registration approval. The Secretary shall act upon all applications; however, the periods set forth in this section for application review by the Secretary shall not be deemed to have begun until such time as the permit application is deemed complete.

5.10. Any denial order for a permit application for the proposed construction, modification, relocation ~~or~~, registration for a general permit and operation of any source shall set forth the reasons of such denial with reasonable specificity.

5.11. The Secretary may impose any reasonable condition as part of a granted administrative update, construction, modification, existing stationary source operating permit or relocation permit. Such condition may include, but not be limited to, the submission of periodic progress, operation or emissions reports, the provisions for a suitable emissions sampling site and the installation of air pollutant monitoring devices. The Secretary shall impose or incorporate, consistent with all applicable rules, enforcement conditions which assure that all emission limitations contained within the permit are quantifiable, permanent and practicably enforceable. The Secretary may, on the basis of information provided in a permit application or with the agreement of the permit applicant, impose source-specific emission limitations, limits on the hours of operation or production rates, or other constraints to minimize air pollutant discharges or establish enforceable emission caps for a stationary source not otherwise specifically required by a rule of the Secretary promulgated pursuant to W. Va. Code §22-5-1 et seq. Any portions of the permit application, other than plans and specifications, that are to be made permit conditions must be specifically identified in the permit itself.

5.12. The Secretary may develop and issue Class I and Class II general permits under this rule authorizing the construction, modification ~~or~~, relocation and operation of a category of sources by the same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit.

5.12.a. Class I general permits may be issued by the Secretary for those types of sources considered less significant than sources for which the Secretary issues Class II general permits. In making this determination as to significance, the Secretary shall consider the nature and volume of emissions from the source, whether the source operates on a continuous or an intermittent basis, the proximity of the source to any location occupied by the public and the length of time the source is expected to remain in place. The designation of Class I or Class II for a general permit shall be made at the time the permit goes through public comment and adoption for the source category governed by the general permit.

5.12.b. Class I and II general permits shall be subject to public notice requirements and application fees as specified under sections 8 and 12, respectively.

5.13. The owner or operator of any stationary source which adds an additional emissions unit or makes a change in the method of operation which results in an emissions increase, or in the discharge of a new regulated air pollutant, in an amount below the levels which require a permit to modify, excluding the emissions units listed in Table 45-13B, may notify the Secretary in writing even though a permit is not required. The notification shall briefly describe the emission unit or change, the pollutants involved, the potential to emit for each pollutant increased or added and supporting calculations. Within thirty (30) working days of receipt of such a notice, the Secretary shall notify the owner or operator in writing if the Secretary believes a permit is required, setting forth the reasons with reasonable specificity or shall notify the owner or operator that insufficient information was submitted to enable a determination to be made and specify the information required.

5.14. The owner or operator of any stationary source which adds an additional emissions unit or makes a change in the method of operation which results in an emissions increase, or in the discharge of a new regulated air pollutant, in an amount below the levels which require a permit to modify, excluding the emissions units listed in Table 45-13B, shall maintain records briefly describing the emission unit or change, the pollutants involved, the potential to emit for each pollutant increased or added and supporting calculations. Such records shall be maintained by the owner or operator for at least two (2) years and shall be made available to the Secretary upon request.

5.15. Any person holding a permit issued pursuant to subsection 5.5 may make a written request to the Secretary for a cancellation of such permit. If granted by the Secretary, such a cancellation shall not excuse any violation of the permit terms or conditions prior to the Secretary's cancellation of such permit. In no case shall such a permit cancellation become effective until the permitee and U.S. EPA are provided with a sixty (60) day written notice of such a permit cancellation.

§45-13-6. Determination of Compliance of Stationary Sources.

6.1. At the time a stationary source is alleged to be in compliance with an applicable emission standard and at reasonable times to be determined by the Secretary thereafter, appropriate tests consisting of visual determinations or conventional in-stack measurements or other tests the Secretary may specify shall be conducted to determine compliance.

6.2. For cause, the Secretary may request the owner or operator of a stationary source to install stack gas monitoring devices the Secretary deems necessary to determine continuing compliance. The data from such devices shall be readily available for review at the source location or other reasonable location that the Secretary may specify. At the request of the Secretary, the data shall be made available for inspection or copying and the Secretary may require periodic submission of excess emission reports.

6.3. If, after completion of a stack test required by the Secretary, a source fails to prove compliance with permit conditions, W. Va. Code §§ 22-5-1 et seq., or any rules promulgated thereunder, the source shall immediately take steps approvable by the Secretary which shall assure compliance. These steps may include a reduction in throughput capacity or additional and enhanced control devices.

§45-13-7. Modeling.

7.1. Any source required to obtain a permit pursuant to this rule may be required to conduct modeling to assist the Secretary in determining whether the proposed construction, modification ~~or~~, relocation and operation will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of this rule or W. Va. Code §22-5-1 et seq. Any modeling required under this subsection shall be conducted in accordance with 40CFR Part 51, Appendix W, or an alternative modeling protocol approved by the Secretary.

§45-13-8. Public Review Procedures.

8.1. The Secretary shall maintain for public review a permit application list of proposed new stationary sources, source modifications, relocations, operating permits, Class II administrative updates, temporary permits ~~and~~, Class II general permit applications/registrations, and sources seeking permission to construct in advance of permit issuance containing the name of the applicant, the type and location of the source, and the proposed start-up date for the stationary source.

8.2. During the time period that an applicant's name appears on the permit application list, the Secretary will receive and evaluate written comments relating to the permit application.

8.3. Notice Level A. At the time that an application for a construction, modification, relocation, operating permit, Class II administrative update, temporary permit or Class II general permit registration is filed, the applicant shall also place a Class I legal advertisement in a newspaper of general circulation in the area where the source is or will be located. No such permit or general permit registration shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought, the proposed start-up date for the source and a contact telephone number for more information.

8.4. Notice Level B. In addition to the notice requirements under subsection 8.3, for construction and modification applications, applications for sources subject to 45CSR15, 45CSR16, 45CSR27 and 45CSR34, and all other applications not subject to the provisions of subsections 8.3 or 8.5, the Secretary shall place a Class I legal advertisement of the agency's intent to issue in a newspaper of general circulation in the area where the source is or will be located, provided that applications for Class I administrative updates and Class I general permit registrations are not subject to public notice. No construction, modification or operating permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and the proposed start-up date for the source. Additionally, at the Secretary's discretion, the applicant may be required to place a commercial display advertisement as set forth in subdivision 8.4.a.

8.4.a. Within one week prior to the Secretary's placement of a Class I legal advertisement of intent to issue or within three (3) working days of the Secretary's placement of the advertisement, the applicant shall publish a commercial display advertisement in a newspaper of general circulation in the area where the source is or will be located. The commercial display advertisement shall be at least 3 inches by 5 inches and contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought, the proposed start-up date for the source and a contact telephone number for more information.

8.5. Notice Level C. In addition to the notice requirements under subsection 8.3, for eligible sources for which the agency intends to issue a permit to limit physical and operational capacity below major stationary source thresholds (including 45CSR14, 45CSR19, 45CSR30 and 45CSR34), the Secretary shall place a Class I legal advertisement of the agency's intent to issue in a newspaper of general circulation in the area where the source is or will be located. No permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and the proposed start-up date for the source. Additionally, the applicant shall be required to place a commercial display advertisement as set forth in subdivision 8.4a. and a sign as set forth in subdivision 8.5.a.

8.5.a. Within one week prior to the Secretary's placement of a Class I legal advertisement of intent to issue or within three (3) working days of the Secretary's placement of the advertisement, the applicant shall post a visible and accessible sign, at a minimum 2 feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that an air quality permit has been applied for and include the West Virginia Division of Air Quality permitting section telephone number for additional information. The applicant must post the sign for the duration of the public notice period.

8.6. At the Secretary's discretion, public notice requirements of subsection 8.4 may be moved to the next higher notice level.

8.7. The Secretary shall, prior to issuance of any permit subject to public notice under subsections 8.4 or 8.5, prepare an engineering evaluation supporting his or her stated intent to issue such a permit and shall transmit to U. S. EPA and any other interested party which so requests, a nonconfidential copy of the engineering evaluation and a draft copy of the permit which is proposed for issuance. Concurrently, the Secretary shall notify the public through a Class I legal advertisement in accordance with the provisions of subsections 8.4 or 8.5.

8.8. The Secretary shall review and appropriately address any comments received from the public and U. S. EPA prior to permit issuance.

8.9. Public notice of any proposed new or revised general permit, Class I or Class II, must be conducted by the agency in accordance with the provisions of subsection 8.4. The Secretary shall, prior to issuance or revision of any general permit, prepare a rationale document supporting his or her stated intent to issue or revise such general permit and shall transmit to U. S. EPA and any other interested party which so requests, a nonconfidential copy of the rationale document and a draft copy of the general permit which is proposed for issuance or revision. The Secretary shall review and appropriately address any comments received from the public and U. S. EPA prior to the issuance or revision of any general permit.

§45-13-9. Public Meetings.

9.1. A public meeting(s) to provide information and receive comments on permit applications may be held when the Secretary deems it appropriate or when substantial interest is expressed, in writing, by persons who might reasonably be expected to be affected by the stationary source.

9.2. The Secretary, or a duly authorized representative shall preside over such meeting and assure that all interested parties have ample opportunity to present comments. Such meeting shall be held at a convenient place as near as practicable to the location or proposed location of the stationary source.

9.3. At a reasonable time prior to such meeting, the Secretary shall provide appropriate information to news media in the area where the stationary source or proposed stationary source is located or to be located or otherwise provide notice of the meeting.

§45-13-10. Permit Transfer, Suspension, Revocation and Responsibility.

10.1. ~~A~~Any permit issued under this rule may be transferred from a permittee to another person by modification of an existing permit or by transfer under this subsection. Any permit may be transferred to a new permittee if the Secretary determines that the proposed permittee has all necessary permit responsibility and the current permittee notifies the Secretary in writing at least 30 days in advance of the proposed transfer date. The proposed new permittee must certify to the Secretary, at least thirty (30) days in advance of the proposed transfer date, that a complete copy of the existing permit application and permit has been obtained and reviewed and that the new permittee shall adhere to the design and operating parameters contained in the application and comply with all terms and conditions in the permit. The notice must include a written agreement between the existing permittee and proposed new permittee containing a specific date for transfer of the permit and explaining the extent of permit responsibility between them. The Secretary shall notify the existing and proposed new permittee in writing of his intent to require the transfer through permit amendment, the filing of a new application or deny the transfer request. If such notification from the Secretary is not received by the existing permittee and proposed new permittee within thirty (30) days after the Secretary's receipt of their respective notices, then the transfer is effective on the date specified in the written agreement between the permittees.

10.2. The Secretary may suspend or revoke a permit or general permit registration if, after (6) months from the date of issuance, the holder of the permit cannot provide the Secretary, at the Secretary's request, with written proof of a good faith effort that construction, modification, or relocation, if applicable, has commenced. Such proof shall be provided not later than thirty (30) days after the Secretary's request. If construction or modification of a stationary source is discontinued for a period of eighteen (18) months or longer, the Secretary may suspend or revoke the permit or general permit registration.

10.3. The Secretary may suspend or revoke a permit or general permit registration if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to. Upon notice of the Secretary's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the Secretary in accordance with the provisions of W. Va. Code § 22-5-5 to show cause why the permit or general permit registration should not be suspended, modified or revoked.

10.4. Possession of a permit does not relieve any person of the responsibility of complying with any and all rules of the Secretary or W. Va. Code §22-1-1 et seq.

10.5. A source which has not operated at least 500 hours in one 12-month period within the previous five (5)-year time period may be considered permanently shutdown, unless such source can provide to the Secretary, with reasonable specificity, information to the contrary.

All permits or general permit registrations may be modified or revoked and/or reapplication or application for new permits may be required for any source determined to be permanently shutdown.

§45-13-11. Temporary Construction or Modification Permits.

11.1. Upon written request by an owner or operator of a source, the Secretary may allow the owner or operator to make limited changes for experimental, testing, commercial development and other temporary purposes for limited periods of time without applying for a construction permit or permit modification otherwise required under the provisions of this rule for such activity. If granted, the temporary permit shall indicate the nature of the activity being approved, the time period for which the approval is being granted, and any conditions to be imposed on the approved activity.

11.2. To permit experimental, testing, commercial development and other temporary purposes, the Secretary may issue temporary permits for periods up to six (6) months (which may be extended in writing for up to twelve (12) additional months at the Secretary's discretion) upon the submission of a written application for such extension to the Secretary by the owner or operator. The Secretary may impose any reasonable conditions as part of a temporary permit which may include, but not be limited to, the submission of periodic progress or operation reports, the provision of suitable sampling sites for tests, emissions testing by the permittee, and the installation, operation, and maintenance of air pollutant monitoring devices.

11.2.a. The Secretary shall maintain for public review a permit application list of all pending applications for temporary permits containing, at a minimum, the name of the applicant, the type and location of the source, and the proposed start-up date for the stationary source. At the same time that an application for a temporary permit is filed with the Secretary, the applicant shall also place a Class I legal advertisement in a newspaper of general circulation where the source is or will be located. The advertisement shall contain the information required under subsection 8.3. No temporary permit may be issued by the Secretary until a thirty (30) day comment period is provided. During this time, the Secretary will receive and evaluate written comments relating to the application.

11.2.b. The Secretary may suspend or revoke any temporary permit upon 24-hour notice to the permittee if the Secretary determines that suspension or revocation is appropriate to protect human health or the environment. Notice may be given verbally, but shall be confirmed in writing by the Secretary immediately thereafter.

11.3. Any temporary permit issued under this section which has expired is not eligible for extension or eligible to reapply for a temporary permit. The activities shall be solely at the risk of the owner or operator of the stationary source and, in undertaking any such activities, the owner or operator shall not assert as any argument, including legal or equitable, in any proceeding (administrative, civil or criminal) that such activities or investment has occurred.

11.4. Upon written request by an owner or operator of a source subject to a temporary permit, the Secretary may allow the owner or operator to conduct emissions testing under an approved protocol. If granted, the approval shall indicate the nature of the activity being approved, the time period for which the approval is being granted and any conditions to be imposed on the approved activity.

§45-13-12. Permit Application Fees.

12.1. Applications for permits required under sections 5 and 11 shall be subject to the fee provisions of section 3 of 45CSR22, provided that Class I general permit registrations shall be subject to a \$250 application fee and Class II general permit registrations shall be subject to a \$500 application fee, in lieu of the \$1000 fee required under subdivision 3.4.a of 45CSR22; provided, however, that a source applying for a Class I general permit which qualifies as a small business under section 507(c) of the federal Clean Air Act shall not be subject to any application fees. The provisions of subdivision 3.4.b of 45CSR22 relating to additional fees shall not be applicable to sources applying for Class I general permits but shall be applicable to sources applying for Class II general permits. Applications for permits under section 4 shall be subject to the fee provisions of section 4.

§45-13-13. Inconsistency Between Rules.

13.1. In the event of any inconsistency between this rule and any other rule of the Secretary, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

§45-13-14. Statutory Air Pollution.

14.1. Upon a determination by the Secretary that a source should be made subject to the permitting requirement of this rule to prevent a statutory air pollution, the Secretary shall require the owner or operator of the source to apply for and obtain a permit pursuant to the provisions of this rule. The Secretary may require a permit for any source that would not otherwise be subject to this rule or with respect to any source that is subject to this rule with respect to emissions or potential emissions other than those emissions upon which the Secretary's finding is based. In issuing any permit condition required by this subsection, the Secretary may impose any reasonable condition necessary to prevent a statutory air pollution.

§45-13-15. Hazardous Air Pollutants.

15.1. For purposes of establishing an inventory of hazardous air pollutants, any person who makes an application for a permit as required by subsections 5.1, 5.12 or 11.2 shall include in the application information on the nature and extent of any emissions of hazardous air pollutants. Hazardous air pollutants (that are not air pollutants listed in Table 45-13A) shall be subject to limitations or controls only to the extent necessary:

15.1.a. to incorporate an applicable requirement based upon any rule of the Secretary promulgated pursuant to W. Va. Code §§ 22-5-1 et seq.;

15.1.b. to implement subsection 5.5 related to voluntary permitting;

15.1.c. to establish case-by-case maximum achievable control technology (MACT) requirements as required by 45CSR34; or

15.1.d. to set an emission limit based upon the source's maximum potential to emit as provided in the permit application.

15.2. In the event of a subsequently issued MACT requirement, the facility may request a review of an existing permit received pursuant to this rule. When appropriate, said MACT requirements shall be incorporated into the permit.

15.3. Any source or source category that has been the subject of an analysis pursuant to Section 112(n) of the federal Clean Air Act shall be exempt from any limitations or controls on hazardous air pollutants until such time as it has been determined that MACT controls are applicable. In the event that MACT controls are determined to be applicable to a 112(n) source or source category, this section shall be applicable only to the hazardous air pollutants that are subject to such MACT.

§45-13-16. Application for Permission to Commence Construction in Advance of Permit Issuance.

16.1. With respect to the modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, any person who holds an active West Virginia air quality permit issued under this rule at an existing source, and who has applied for permission to alter, expand or modify that source or to allow a new emissions unit at that source, may begin the construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with this section. The person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by this rule.

16.2. Eligibility requirements. The following sources are ineligible for permission to commence construction in advance of permit issuance:

16.2.a. Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).

16.2.b. Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards.

16.2.c. Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

16.3. Application requirements. To qualify for the authorization to construct in advance of permit issuance as provided in this section, the permittee shall submit to the Secretary an application for permission to commence construction in advance of permit issuance. Such application for permission to commence construction shall include all of the following:

16.3.a. The name and location of the source and the name and address of the permittee;

16.3.b. The permit number of each active permit issued under this rule for such source;

16.3.c. The nature of the sources and equipment associated with such alteration, expansion, modification or new emission unit;

16.3.d. An estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit;

16.3.e. The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit;

16.3.f. A listing of the applicable state and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit, and sufficient information which, in the judgment of the Secretary, will demonstrate compliance with any applicable state and federal air quality regulatory requirements;

16.3.g. The anticipated construction or building schedule for alteration, expansion, modification or new emission unit;

16.3.h. A certification signed by the responsible official that the source, equipment and devices that are subject to a request for construction authorization will not be operated until the permittee has obtained a permit under rules promulgated by the Secretary;

16.3.i. A certification by the responsible official that any construction undertaken prior to the issuance of a final permit under rules of the Secretary is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a permit or permit modification without regard to the permittee's financial investment or addition to or modification of the source; and

16.3.j. A certification signed by the responsible official that all of the information contained in the application is complete and accurate to the best of the responsible official's knowledge and ability.

16.4. Public Notice. Upon submission of the application for permission to construct, the applicant shall give notice by publishing a Class I legal advertisement of the applicant's intent to alter or expand the physical arrangement or operation of an existing stationary source and the opportunity to provide written comment to the Secretary within thirty (30) calendar days of the publication.

16.4.a. The applicant shall post a visible and accessible sign, at a minimum 2 feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that a permission to construct has been applied for and include the West Virginia Division of Air Quality permitting section telephone number and website for additional information. The applicant must post the sign for the duration of the public notice period.

16.4.b. Public notice shall be in a newspaper having general circulation in the county or counties where the facility is located. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the fact that the applicant has applied for permission to construct in advance of permit issuance, the proposed start-up date for the source and a contact telephone number for more information.

16.4.c. Within fifteen (15) days of completion of the public comment period, the Secretary shall consider and respond to all written comments. If the Secretary finds that concerns raised by the public comment period give rise to issues or concerns that would cause a construction or operational permit not to be issued, the Secretary may issue a revocation or stay of the authorization to construct until those issues or concerns are resolved.

16.5. Completeness determination. The Secretary shall determine whether an application for permission to commence construction in advance of permit issuance is complete within fifteen (15) calendar days after receipt of the application at which time the Secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

16.6. Determination regarding permission to commence construction. Within fifteen (15) calendar days after the Secretary has made a determination that an application for permission to commence construction in advance of permit issuance is complete, unless the Secretary for good cause shown, extends the fifteen (15) day time period for up to an additional fifteen (15) calendar days, the Secretary shall notify the applicant in writing of his or her determination as to whether each of the following conditions has or has not been satisfied:

16.6.a. The applicant is and has been for a period of at least three years in substantial compliance with all other active permits and applicable state and federal air quality regulatory requirements under this rule;

16.6.b. The applicant has demonstrated that the alteration, expansion, modification or new emission unit will be in compliance with all applicable state and federal air quality regulatory requirements;

16.6.c. The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of W. Va. Code §22-5-1 et. seq.;

16.6.d. The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted;

16.6.e. The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted; and

16.6.f. The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.

16.7. If the Secretary finds that all of the conditions of subsection 16.6 have been satisfied, the Secretary shall notify the applicant in writing of his or her determination that construction of the alteration, expansion, modification or new emission unit in advance of permit issuance may begin immediately. If the Secretary finds that one or more of the conditions has not been met, the notice of determination shall state that the requested construction, alteration, expansion, modification or new emission unit may not begin prior to issuance of a new or modified permit under this rule.

16.8. If at any time during the construction of such alteration, expansion, modification or new emission unit, the Secretary determines that the source is not likely to qualify for a permit or permit modification under this rule, the Secretary may order that construction cease until the Secretary makes a decision on the application for a permit or permit modification.

16.9. If the Secretary orders that construction cease, then construction of the alteration, expansion, modification or new emission unit may resume only if the Secretary either makes a subsequent written determination that the circumstances that resulted in such order have been adequately addressed or issues a permit or registration under this rule that authorizes construction to resume.

16.10. The Secretary shall evaluate any application for a permit or registration under this rule and make a decision on the same basis as if the construction of the alteration, expansion, modification or new emission unit in advance of permit issuance had not been authorized pursuant to this section. No evidence regarding any contract entered into, financial investment made, construction undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under this rule is admissible in any contested case or judicial proceeding involving any permit or registration required under this rule. No evidence as to any determination or order by the Secretary pursuant to this section shall be admissible in any contested case or judicial proceeding related to any permit or registration required under this rule.

16.11. Any permittee who proceeds under this section shall be precluded from bringing any action, suit or proceeding against the state, the officials, agents and employees of the state or the Secretary for any loss resulting from any contract entered into, financial investment made, construction undertaken, or economic loss incurred by the permittee in reliance upon the provisions of this section.

16.12. This section does not relieve any person of the obligation to comply with any other requirement of state law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or method of operation of a source at a facility for which a permit or registration is required under this rule.

16.13. This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the Secretary. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Secretary. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the Secretary.

16.14. Application fee. A permittee who submits an application to commence construction in advance of permit issuance under this section shall pay a fee of $200 for each application submitted to cover a portion of the administrative costs of implementing this section.

TABLE 45-13A

Pollutant	Potential Emission Rate pounds/year
Acrylonitrile	500
Allyl Chloride	10,000
Arsenic Compounds (Inorganic)	200
Asbestos	14
Benzene	1,000
Beryllium	0.8
1,3 Butadiene	500
Carbon Tetrachloride	1,000
Chloroform	1,000
Ethylene Dichloride	1,000
Ethylene Oxide	500
Formaldehyde	1,000
Lead or lead compounds	1,200
Mercury	200
Methylene Chloride	5,000
Propylene Oxide	5,000
Trichloroethylene	10,000
Vinyl Chloride	1,000
Vinylidene Chloride	2,000

TABLE 45-13B

DE MINIMIS SOURCES

1. Air compressors and pneumatically-operated equipment, including hand tools; instrument air systems (excluding fuel-fired compressors); emissions from pneumatic starters on reciprocating engines, turbines or other equipment; and periodic use of air for cleanup (excluding all sandblasting activities).

2. Air contaminant detectors or recorders, combustion controllers or shutoffs.

3. Any consumer product used in the same manner as in normal consumers' use, provided the use results in a duration and frequency of exposure which are not greater than those experienced by consumers and which may include, but not be limited to, personal use items; janitorial cleaning supplies; office supplies; and supplies to maintain copying equipment.

4. Bathroom/toilet vent emissions.

5. Tobacco smoking rooms and areas.

6. Batteries and battery charging stations, except at battery manufacturing plants.

7. Bench-scale laboratory equipment used for physical or chemical analysis, excluding lab fume hoods or vents.

8. Routine calibration and maintenance of laboratory equipment or other analytical instruments.

9. Boiler water treatment operations, excluding cooling towers.

10. Portable brazing, soldering, gas cutting or welding equipment used as an auxiliary to the principal equipment at the source.

11. CO_2 lasers, used only in metals and other materials which do not emit any hazardous air pollutants in the process.

12. Combustion emissions from propulsion of mobile sources.

13. Wood heaters, cookstoves or fireplaces used for heating and/or cooking at residential or publicly-owned facilities.

14. Comfort air conditioning or ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

15. Demineralized water tanks and demineralizer vents.

16. Drop hammers or hydraulic presses for forging or metalworking.

17. Equipment used exclusively for pressing, drawing or stamping of metals, excluding emissions due to quenching activities or supporting equipment.

18. Emissions from die-casting machinery, excluding emissions from melt furnaces or other associated processes.

19. Foundry sand molding forming equipment, provided no heat is applied and no VOCs or hazardous air pollutants are emitted, but not including the metal pouring process.

20. Electric or steam-heated drying ovens, autoclaves or steam sterilizers, excluding the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

21. Emergency electrical generators at residential locations.

22. Emergency road flares.

23. Environmental chambers not using hazardous air pollutant gases.

24. Emissions from food preparation at restaurants and cafeterias.

25. Equipment used exclusively to slaughter animals, excluding other equipment at slaughterhouses, such as rending cookers, boilers, heating plants, incinerators and electrical power generating equipment.

26. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

27. Fire suppression systems.

28. Firefighting equipment and the equipment used to train firefighters and emergency response individuals, which is subject to 45CSR6 and complies with 45CSR15.

29. Single-use flares used solely to indicate danger to the public.

30. Hand-held applicator equipment for hot melt adhesives with no VOCs or hazardous air pollutants in the adhesive formulation.

31. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.

32. Humidity chambers.

33. Hydraulic and hydrostatic testing equipment.

34. Mobile internal combustion engines used for landscaping purposes.

35. Laser trimmers using dust collection to prevent fugitive emissions.

36. Laundry activities, excluding dry-cleaning and steam boilers.

37. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

38. Oxygen scavenging (de-aeration) of water.

39. On-site plant maintenance and upkeep activities, including, lawn care, weed control, pest control, general repairs, cleaning, painting, surface coating, welding, plumbing, grinding, cutting, woodworking, janitorial activities, re-tarring roofs, installing insulation, and paving parking lots, provided that these activities are not conducted as part of a manufacturing process and are not related to the source's primary business activity; provided further, that for cleaning, surface coating and painting activities, the source is not subject to VOC or HAP control requirements and the source minimizes the generation of fugitive emissions of any regulated air pollutants; and provided further, that the source complies with the asbestos requirements in 45CSR15.

40. Commercial and residential maintenance and upkeep activities occurring at a building, residence or other structure, including lawn care, weed control, pest control, general repairs, cleaning, painting, surface coating, welding, plumbing, grinding, cutting, woodworking, janitorial activities, re-tarring roofs, installing insulation, and paving parking lots, provided that these activities are not conducted as part of a manufacturing process; provided further, that for cleaning, surface coating and painting activities, the source is not subject to VOC or HAP control requirements and the source minimizes the generation of fugitive emissions of any regulated air pollutants; and provided further, that the source complies with the asbestos requirements in 45CSR15.

41. Portable electrical generators that can be moved by hand from one location to another. "Moved by hand" means that it can be moved without the assistance of any motorized or nonmotorized vehicle, conveyance or device.

42. Process water filtration systems and demineralizers.

43. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

44. Shock chambers.

45. Solar simulators.

46. Steam cleaning operations, excluding hazardous air pollutant emissions.

47. Steam leaks.

48. Steam vents and safety relief valves, provided that such valves shall be included in any permit application that may otherwise be required under this rule.

49. Storage tanks, reservoirs and pumping and handling equipment of any size containing soaps, vegetable oil, animal grease or fat and aqueous salt solutions, provided appropriate lids and covers are utilized, excluding rendering plants.

50. Storage tanks, vessels and containers holding or storing liquid substances that will not emit any regulated air pollutant.

51. Vents from continuous emissions monitors and other analyzers.

52. Operation of groundwater remediation wells, including emissions from the pumps and collection activities. This does not include emissions from air-stripping treatment or storage.

53. Log wetting areas that are using only water.

54. Log flumes.

55. The storage, handling and handling equipment for bark and wood dust not subject to 45CSR7.

56. Solid waste dumpsters.

57. Ozone generators used in water treatment facilities.

58. Storage vessels having less than 10,567 gallons capacity containing petroleum or organic liquids with a vapor pressure of 1.5 psia or less at storage temperature, provided that the emissions from all such organic liquid storage tanks, in the aggregate, are less than 2 tons per year for hazardous air pollutants or VOCs.

59. A source that is not major that emits only nonprocessed fugitive emissions (other than haul roads).

dep

west virginia department of environmental protection

SIGN-IN SHEET

Public Hearing on the Division of Air Quality Rules:
45CSR1, 45CSR8, 45CSR13, 45CSR14, 45CSR16, 45CSR25, 45CSR26, 45CSR34 and 45CSR37
August 11, 2008, 6:00 p.m.

Name (please print)	Address	Organization	Phone	E-mail	Comment Y/N
Dave Yaussy	PO Box 1791 Chas	Robinson & McElwee	347-8358	dly@ramlaw.com	No
Pam Nixon		WV-DEP		Pamela.Nixon@WV.gov	
Jim Mason	601 57th St E.	WV-DAQ			No

Promoting a healthy environment.

ORIGINAL

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

IN THE MATTER OF:

PROPOSED REVISIONS TO RULE 45CSR13, PERMITS FOR CONSTRUCTION, MODIFICATION, RELOCATION AND OPERATION OF STATIONARY SOURCES of AIR POLLUTANTS, NOTIFICATION REQUIREMENTS, ADMINISTRATIVE UPDATES, TEMPORARY PERMITS, GENERAL PERMITS, AND PROCEDURES FOR EVALUATION

TRANSCRIPT OF PROCEEDINGS had or testimony adduced pursuant to the West Virginia Rules of Civil Procedure in the above-entitled action, on the 11th day of August, 2008, commencing at 6:15 p.m. and concluding at 6:17 p.m., at the West Virginia Department of Environmental Protection, 601 57th Street S.E., Charleston, Kanawha County, West Virginia, taken by Jo Ann Wilson, Certified Court Reporter, duly certified by the West Virginia Supreme Court of Appeals and Notary of West Virginia, pursuant to notice to all interested parties.

BEFORE: JAMES MASON, Moderator

I N D E X

MR. MASON: This public hearing will now come to order this 11th day of August, 2008, at the West Virginia Department of Environmental Protection Headquarters. Comments and testimony will be accepted until the close of this hearing, and will be made part of the rulemaking record. Any question regarding revisions to the rules, or repeal, will be included with your comments. Any such question will be answered as part of the response to comments in the rulemaking record.

The purpose of this public hearing is to satisfy state rulemaking requirements by accepting comments on proposed revisions to Rule 45CSR13, Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation. This rule sets forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source, which is not a major stationary source, and to modify a non-major stationary source.

The proposed revisions reduce the timelines for minor source air permit issuance. The revisions to the rule also allow equipment and materials to be delivered and stored onsite prior to permit issuance, as well as clarify that a Rule 13 permit is also an operating permit. A new section adds a 15-day preapproval review for permission to commence construction or modification prior to receiving a permit, provided that operation does not commence until a permit is issued.

The Division of Air Quality will provide EPA with a separate 30-day review and comment period, and upon authorization and promulgation of 45CSR13, the Division will submit the rule to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan, pursuant to the federal Clean Air Act.

The floor is now open for comments.

(There being no comments,
Proceedings resumed as follows.)

MR. MASON: There being nothing further, this public hearing for Proposed Rule 45CSR13 is concluded.

(WHEREUPON, the public hearing was concluded.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to wit:

I, **JO ANN WILSON**, Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 20th day of August, 2008.

My commission expires July 10, 2016.

Jo Ann Wilson, C.C.R

Certified Court Reporter

OFFICIAL SEAL
Notary Public, State Of West Virginia
JO ANN WILSON
1678 Grapevine Rd.
Sissonville, WV
My Commission Expires 2016

08-14-08P02:24 RCVD

SIERRA CLUB
WEST VIRGINIA CHAPTER

P. O. Box 4142
Morgantown, WV 26504

Aug. 10, 2008

West Virginia Division of Air Quality
Department of Environmental Protection,
601 57th Street S.E.,
Charleston, WV 25304.

Re: Comments on Air Rules.

Please accept the following comments on behalf of the West Virginia Chapter of Sierra Club.

1. 45-CSR-1. No comments.

2. 45-CSR-13 (Construction permits) incorporates new provisions pursuant to HB 4438 from the 2008 Legislature. This bill allows applicants to begin construction prior to obtaining a final construction permit.

2.A. 45-CSR-13. Section 4.1.b. requires that the secretary issue administrative updates within 60 days after receipt of a complete application. While this is reasonable for Class I administrative updates, Class II administrative updates are those that allow emissions increases, changes in operating parameters, changes in emissions points, or changes in control equipment. These also require public notice and comment, and agency staff need time to respond to such comment and incorporate those comments into their decisions. Therefore, we recommend that the 60-day time limit apply only to Class I administrative updates.

2.B. 45-CSR-13 Section 5.7.a requires the Secretary to issue a permit within 90 days of certifying that an application is complete. The original language of the rule specified that the Secretary had 180 days to reach a decision. We continue to object to this 90-day limit as it does not provide agency staff with adequate time to review complex permits, and it does not provide adequate time for the public to review a permit and provide meaningful input. The change is clearly an attempt to limit public participation and is contrary to the intent of the Clean Air Act. In many cases, permits must also be reviewed by other agencies, including federal land managers, and environmental agencies in adjoining states. It is simply not possible to get meaningful input and resolve outstanding complex technical issues in only 90 days.

Of even greater concern is the time needed to provide technical review of permits by the public. During the recent debate over the Longview Power permit, citizens retained outside air pollution experts, filed substantive comments, and ultimately negotiated more protective air pollution limits and monitoring requirements than were originally proposed by the applicant or by DEP. These changes were agreed to by the applicant and DEP, and significantly reduced pollution emissions from the proposed facility. Citizens simply can not be expected to get the necessary technical expertise, allow adequate review by such experts, and file meaningful comments within a period as short as 90 days. Thus the effect of this change, as illustrated by the Longview permit, would be to allow greater pollution emissions, a clear violation of the requirement for Best Available Control Technology limits in air permits.

We recommend that the proposed language be revised to allow 120 days for permit review, with an additional 60 days when the Secretary receives a request for additional time for public comment or when the source constitutes a major source. Alternatively, the rule should be revised to require that all public and agency comment has been received before the permit is determined to be "administratively complete."

2.C. 45-CSR-13. Section 16.3. Application Requirements for permission to commence construction in advance of permit issuance. The requirements for such an applicant should be expanded to assist the agency with it s permit review and to assure the applicant that its proposed emissions limits and control technologies will comply with the Clean Air act. At a minimum, the applicant should be required to submit information documenting that the emissions limits and pollution control technologies will comply with the Best Available Control Technology requirements of the Clean Air Act. This should include a listing of the best performing comparable facilities, the emissions levels that have been permitted and have been achieved, and a review of permit limits issued recently for comparable facilities elsewhere.

This approach will help DEP achieve an adequate review within reasonable time limits. More importantly, it would help the applicant by assuring that their proposed technologies will be achieved, and that significant changes will not be required after construction has begun. A similar BACT process is already required for major sources in West Virginia, and for non-major sources in some other states. While this would not make such a BACT process mandatory for all minor sources, those that wish the extra privilege of permission for early construction should be willing to take the extra steps of assuring that their pollution controls really are among the best available.

We recommend language such as the following:

" 16.3.k. A listing of alternative pollution control technologies or methods which results in the most stringent emission limitation or control technology which has been achieved in practice for such category or class of source; or which is contained in any state implementation plan (SIP) approved by the United States Environmental Protection Agency (EPA) for such category or class of source.

2.D. 45-CSR-13. Section 16.2 describes eligibility requirements for applicants for a permit to commence construction in advance of permit issuance. An additional limitation is needed for ineligible facilities: "16.6.2.d. Sources located in areas designated as nonattainment areas under the "Federal Clean Air Act".

The rule already requires that the Secretary find that the permission to construct would not jeopardize attainment areas, this amendment simply clarifies that no permits would therefore be allowed in nonattainment areas. "Nonattainment areas" are those parts of the state where air quality does not meet federal air quality standards. Adding more pollution in these areas would make an already unhealthy situation worse. Persons living in areas that already have unhealthy levels of air pollutants should not be subject to further additional pollution unless those sources can contribute to further progress toward attainment. It is already difficult enough to bring an area back into attainment, and allowing expedited approval of new sources in these areas will undermine existing attainment plans. This will impose significant federal penalties that are certainly more detrimental to economic development than the current regulatory process. Limiting the preconstruction approvals to areas that are already in attainment will help focus economic development in areas that need it the most, while protecting the air quality of the people who are among the most threatened.

2.E. 45-CSR-13. Section 16.6.a. This section requires that the Secretary determine that an applicant for permission to construct be "in substantial compliance" with all other active permits for the last three years. Unfortunately, the term "substantial" is not defined, and leaves excessive discretion for the secretary to overlook or disregard significant non-compliances with existing active permits. There have been numerous examples in recent years where both the permittee and the DEP have claimed that a facility is in compliance, only to find that it is emitting significantly more pollutants than was authorized by permit. The Fib-Air facility in Preston County claimed to be in compliance with all of its permit conditions, but stack monitoring demonstrated that it was emitting 5 times the permitted level of formaldehyde. DEP's response was to issue a Notice of Violation, but then settle by entering into a Consent decree by which the permit limits were raised to legalize the previously illegal pollution emissions. More recently, the John Amos plant has been implicated as the source of the "Blue Haze" events in the Kanawha Valley. They claimed to be in compliance, but monitoring showed excessive emissions of sulfur oxides identified as precursors of the problems.

The Clean Air Act does not distinguish "substantial" and "insubstantial" violations. Even routine reporting problems are considered substantial because these are crucial to the monitoring and enforcement of air permit conditions.

For these reasons we recommend deleting the word "substantial" from this section.

2.F. 45-CSR-13. Section 16.6.b-f. These sections identify conditions for issuance of a permit to begin construction. Unfortunately, the wording appears to be overly broad, and would allow construction to begin on facilities that do not meet BACT requirements of the Clean Air Act. For example, an applicant could claim that a new unit is not a major modification of a major source, and further claim that this new unit would reduce emissions compared to an older unit being retired. However, the failure to conduct a complete BACT analysis may lead to selection of pollution control technologies that are less effective than the Best Available Control Technologies. If the old existing unit has emissions of 10 pounds per hour of pollutant X, the proposed new unit would only emit nine pound per hour, but the BACT would be 1 pound per hour, then the applicant would be proposing to use a technology that emits nine times more of Pollutant X than would be allowed under BACT. The language of these sections would allow construction to start, even though later analysis or public comment would demonstrate that an alternative technology is required. Hence these sections should be re-written to require that the applicant document the current Best Available Technology at comparable facilities elsewhere. Although it could be argued that section 16.6.b. already implies such application requirements, the rule should state this explicitly.

3. 45-CSR-8 Air Pollution Standards. Section 4.2.b. leaves the annual PM2.5 standard at 15.0 ug/m^3. It is well-established that this standard does not meet the Clean Air Act requirement of protecting human health with an adequate margin of safety. EPA's Clean Air Science Advisory Committee recommends that the limit be set no greater than 14.0 ug/m^3, and we urge DEP to adopt this standard. We recognize that this is more stringent than the current federal standard, but DEP should begin phasing in this standard now, at least in their permit determinations for new sources.

4. 45-CSR-14. We applaud the proposed deletions of the so-called "Clean Unit" exemptions and the exemptions for so-called "Pollution Control Projects". You will recall that we urged these changes in our comments on the 2005 rule amendments. We urge you to go one step further and adopt the following provisions.

4.A. 45-CSR-14. Section 2.40.d. We urge that this exemption for use of fuel derived from municipal solid waste be deleted. I am unaware that this type of fuel constitutes a major use of current coal-fired power plants, and inclusion of such fuels is, in fact, a major change in the fuel source and fuel characteristics. Use of municipal solid waste has the potential to significantly alter emissions of Hazardous Air Pollutants and increase emissions of heavy metals, chlorinated hydrocarbons, and various other pollutants. Deletion of this section would not prohibit the use of Municipal solid waste, but it would allow better review of any environmentally damaging emissions before their use in power plants that were not designed for their use.

4.B. 45-CSR-14. Section 2.50. et seq. We again urge that this definition of a "Plant-wide Applicability Limit" be deleted, along with any other references to it. This change in New Source Review rules allows polluters to shift emission points and engage in a variety of other modifications that make enforcement of emissions limits exceedingly difficult for the agency. The Monitoring requirements associated with these provisions are cumbersome for the agency, and almost impossible for citizens to track and verify. Deletion of exemptions for a PAL would improve enforcement, and largely return the rule to its pre-2005 condition.

5. 45-CSR-16. No comments.

6. 45-CSR-25. No comments

7. 45-CSR-26. No comments

8. 45-CSR-34. It is not clear why the identified sections are being excluded from these emissions standards for Hazardous Air Pollutants. An emission standard is not an "unfounded mandate" per se, and a more appropriate location for any needed exclusions should be identified in other relevant rules.

9. 45-CSR-37. We support the deletion of this rule. This would be consistent with our comments opposing the rule when it was first adopted in 2005-06.

Thank you for the opportunity to comment. Please feel free to contact me if I can provide further information to clarify these comments.

Sincerely,

James Kotcon

James Kotcon, Chair
State Government Programs Committee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

August 26, 2008

Mr. John Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, WV 25304

RE: Proposed Air Quality Rules for 2009 Legislative Session

Dear Mr. Benedict:

The United States Environmental Protection Agency (EPA) would like to thank you for the opportunity to comment on your proposed air quality rules for the 2009 legislative session, specifically 45 CSR 13 and 45 CSR 14.

Our comments and suggestions on your minor source permitting regulations (45 CSR 13) and your major source permitting regulations (45 CSR 14) are provided in Enclosures A and B to this letter. These comments should be addressed prior to formal submittal of your air quality rules (45 CSR 13 and 45 CSR 14) for approval into the West Virginia State Implementation Plan (SIP).

EPA stands ready to help West Virginia address any concerns they may have regarding our comments and suggestions, so they can be approved into the West Virginia SIP. If you have any questions, please contact me or Amy Caprio of my staff at 215 814-2156.

Sincerely,

Judith M. Katz, Director
Air Protection Division

cc: Neil Bigioni, US EPA (w/enclosures)
Fred Durham, WVDEP (w/enclosures)
Jim Mason, WVDEP (w/enclosures)
Enclosures

Enclosure A

EPA's Comments on West Virginia's Series 13 Regulations Titled Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation (45 CSR 13)

1. 40 CFR Section 51.161(a) requires the following information to be included as information available for public comment, "the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval." Rule 45-13-8.7 requires that, "prior to issuance of any permit subject to public notice under subsections 8.4 or 8.5, prepare an engineering evaluation supporting his or her stated intent to issue such a permit and shall transmit to U.S. EPA and any other interested party which so requests, a nonconfidential copy of the engineering evaluation and a draft copy of the permit which is proposed for issuance." Can the West Virginia Department of Environmental Protection (WVDEP) confirm that the type of information or an equivalent of the information required in 40 CFR Section 51.161(a) is covered by the materials made available through 45-13-8.7 or is otherwise made available for public comment, for each type of permit issued pursuant to the requirements of subsection 8.4 or 8.5, and explain whether such materials are available to the public for permits issued pursuant to subsection 8.3.

2. EPA understands the process for permit application and reporting requirements for construction of and modifications to stationary sources laid out in rules 45-13-5.7(a) and 45-13-5.7(b). However, EPA unclear about the process laid out in 45-13-5.7(c) for action on complete temporary or relocation permit applications. EPA believes that the 30 day completeness review required by 45-13-5.9 pertains to permits issued pursuant 45-13-5.7(a), (b) and (c). However, we are not certain why these provisions use non-identical language to address the completeness criteria. We are concerned that use of different language in the 45-13.5.7(c) -- as compared to 45-13.5.7(a) and (b) -- when referring to the completeness requirement may cause confusion in the regulated community if West Virginia does not provide clarification of how the 45-13-5.9 completeness determination works within the time frames specified by 45-13-5.7(c).

3. It is EPA's experience that netting analysis often lack adequate information, contain errors, and reach inappropriate conclusions. Sources that are "netting out" of the major source preconstruction permitting provisions have a greater likelihood of ultimately being subject to the major source provisions and its intended control technology requirements than other classes of minor sources or minor modifications. If such a source is authorized to begin construction on their new source or modification and it is later determined that the application in fact represents a new major source or major modification, it is likely that the applicant may be required by their construction permit to redesign the source to include pollution control equipment. EPA continues to believe that these types of sources do not make good candidates for advance construction.

4. The term "federally enforceable is used in 45-13-16.2(b) as a term of art and is undefined in section 45-13-2 of the regulations. EPA suggests that WVDEP add the definition of

"federally enforceable" from 45-14-2.29 to 45-13-2 to clarify the use of the term in 45 CSR 13.

Attachment B

EPA's Comments on West Virginia's Series 14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration

With respect to 45 CSR 14, we seek clarification regarding West Virginia's intention regarding the following NSR reform provisions that were not included in the regulatory package we received on August 11, 2008. Please refer to the following 40 CFR Section 51.166 (Prevention of Significant Deterioration of Air Quality) changes [Underline is used to denote new EPA regulatory text and ~~strikeout~~ is used to indicate removed text that was not included in the West Virginia regulatory package]:

1. **New Source Review: Reasonable Possibility in Recordkeeping - § 51.166 Permit requirements is amended by revising paragraph (r)(6) introductory text and adding paragraph (r)(6)(vi) to read as follows:**
   (a)(6) Each plan shall provide that, except as otherwise provided in paragraph (a)(6)(vi) of this section, the following specific provisions apply ~~to~~ with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects ~~at a Clean Unit or~~ at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph (a)(6)(vi) of this section, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs (a)(1)(xxviii)(B)(1) through (3) of this section for calculating projected actual emissions. Deviations from these provisions will be approved only if the State specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs (a)(6)(i) through ~~(v)~~ (vi) of this section.

   (vi) A "reasonable possibility" under paragraph (r)(6) of this section occurs when the owner or operator calculates the project to result in either:
   (a) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph (b)(39) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
   (b) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph (b)(40)(ii)(c), sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under paragraph (b)(39) of this section (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (r)(6)(vi)(b) of this section, and not also within the meaning of paragraph (a)(6)(vi)(a) of this section, then provisions (a)(6)(ii) through (v) do not apply to the project.

2. **Treatment of Certain Ethanol Production Facilities Under "Major Emitting Facility" Definition - § 51.166 Prevention of significant deterioration of air quality. Section 51.166 is amended by revising paragraphs (b)(1)(i)(*a*), (b)(1)(iii)(*t*), and (i)(1)(ii)(*t*):**

(b)(1)(i)(*a*) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants <u>(which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140)</u>, fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(b)(1)(iii)(*t*) Chemical process plants—<u>The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;</u>

(i)(1)(ii)(*t*) Chemical process plants—<u>The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;</u>

3. **Prevention of Significant Deterioration for Nitrogen Oxides Increments – § 51.166 Prevention of significant deterioration of air quality. Section 51.166 is amended by revising paragraph (c) to read as follows:**

(c) *Ambient air increments and other measures.* <u>(1)</u> The plan shall contain emission limitations and such other measures as may be necessary to assure that in areas designated as Class I, II, or III, increases in pollutant concentrations over the baseline concentration shall be limited to the following:

<u>Pollutant and Maximum Allowable increase (micrograms per cubic meter)</u>
Class I
Particulate matter:
PM10, annual arithmetic mean.. 4
PM10, 24-hr maximum ... 8
Sulfur dioxide:
Annual arithmetic mean.. 2
24-hr maximum 5
3-hr maximum 25
Nitrogen dioxide:
Annual arithmetic mean..2.5

Class II

Particulate matter:
PM10, annual arithmetic mean . 17
PM10, 24-hr maximum ... 30
Sulfur dioxide:
Annual arithmetic mean..20
24-hr maximum 91
3-hr maximum 512
Nitrogen dioxide:
Annual arithmetic mean..25

Class III
Particulate matter:
PM10, annual arithmetic mean ..34
PM10, 24-hr maximum ... 60
Sulfur dioxide:
Annual arithmetic mean..40
24-hr maximum 182
3-hr maximum 700
Nitrogen dioxide:
Annual arithmetic mean..50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

(2) Where the State can demonstrate that it has alternative measures in its plan other than maximum allowable increases that satisfy the requirements in sections 166(c) and 166(d) of the Clean Air Act for nitrogen oxides, the requirements for maximum allowable increases for nitrogen dioxide under paragraph (c)(1) of this section shall not apply upon approval of the plan by the Administrator.

4. **Clarifications to add "Replacement Unit" and PAL Baseline - § 51.165 Permit requirements.**

Section 51.166 is amended:
a. By revising paragraph (b)(7)(ii).
b. By adding paragraph (b)(32).
c. By revising paragraph (w)(6).

The revisions read as follows:

§ 51.166 Prevention of significant deterioration of air quality.
(b)(7)(ii) An existing emissions unit is any emissions unit that does not meet the requirements in paragraph (b)(7)(i) of this section. A replacement unit, as defined in paragraph (b)(32) of this section, is an existing emissions unit.

(32) [Reserved] *Replacement unit* means an emissions unit for which all the criteria listed in paragraphs (b)(32)(i) through (iv) of this section are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is

replaced. (i) The emissions unit is a reconstructed unit within the meaning of § 60.15(b)(1) of this chapter, or the emissions unit completely takes the place of an existing emissions unit. (ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit. (iii) The replacement does not change the basic design parameter(s) (as discussed in paragraph (y)(2) of this section) of the process unit. (iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(w)(6) *Setting the 10-year actuals PAL level.* (i) Except as provided in paragraph (w)(6)(ii) of this section, the plan shall provide that the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in paragraph (b)(47) of this section) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under paragraph (b)(23) of this section or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The reviewing authority shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the reviewing authority is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOX to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s). (ii) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in paragraph (w)(6)(i) of this section, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

COMMENTS OF THE WEST VIRGINIA CHAMBER OF COMMERCE, THE WEST VIRGINIA MANUFACTURERS ASSOCIATION AND THE WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION ON THE WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AGENCY, DIVISION OF AIR QUALITY'S PROPOSED 45 CSR 13

During the 2008 West Virginia Regular Legislative Session, HB 4438 was passed which made certain changes to the West Virginia Air Pollution Control Act, W.Va. Code §22-5-1, *et seq.* (the "Act"). In general, the statutory revisions decreased the timelines in which the West Virginia Department of Environmental Protection, Division of Air Quality ("DAQ") must act regarding an application for an air permit and added a provision which allows certain sources to construct prior to receiving a permit. The revisions to the statute also required the DAQ to implement changes to its existing rules to correspond to the statutory changes. In response, the DAQ has proposed changes to 45 CSR 13 ("Regulation 13" or "the proposed rule"). The West Virginia Chamber of Commerce, the West Virginia Manufacturers Association and the West Virginia Oil and Natural Gas Association (collectively referred to as "the Associations") represent numerous entities throughout the state which are subject to Regulation 13. The Associations are greatly appreciative of the recent changes made to the statute which provide for a more efficient permitting process and are supportive of an accurate implementation of those changes in Regulation 13. In that regard, the Associations make the following comments concerning the proposed rule.

I. Timelines for Permit Issuance

Certain timelines for the issuance of air permits were revised in the statute. In part, the changes provide that the DAQ must issue a permit for all non-major stationary sources and modifications for existing major stationary sources which are not major modifications, within a reasonable time not to exceed 90 calendar days after an application is deemed complete. This time frame may be extended by the DEP by 30 calendar days to allow for public comment. The Associations are concerned that the proposed rule does not clearly adopt this new timeline.

Section 5.7.a. appears to correctly incorporate the revision to the statute and states that "the Secretary shall issue a permit for all construction or modifications and operation of a stationary source within a reasonable time not to exceed ninety (90) calendar days..." This section clearly indicates that the Agency must act within 90 days (with the 30 day public comment period caveat) for all complete applications for construction or modification <u>and</u> operation of a stationary source. This timeframe revises the current rule which allows the agency 180 days to act on such permit applications. However, the Agency has retained existing Section 5.8 which could be interpreted to contradict Section 5.7.a. Section 5.8 states as follows:

> The Secretary shall complete a review of any application for an existing stationary source operating permit within one hundred eight (180) days of receipt of a complete application and either issue an operating permit or deny coverage under an existing stationary source operating permit if a determination is made that the source or some portion thereof does not comply with applicable rules of the Secretary or of the Secretary determines that acceptable compliance determination provisions cannot be incorporated to satisfy permit terms requested by the permit applicant.

This section applies to an "existing stationary source operating permit" which is defined as

> a permit issued by the Secretary at the request of an owner or operator of a stationary source which establishes enforceable emission rates, operating conditions, and compliance determination procedures for that source based

> upon applicable rules and terms agreed to by the Secretary and the owner or operator.

45 CSR 13-2.12. This type of permit is also addressed in Section 5.5 wherein it states that "any person who owns or operates an existing stationary source may voluntarily request a permit to operate the stationary source under enforceable terms established in an existing stationary source operating permit issued pursuant to this rule..." An "existing stationary source operating permit is a voluntary permit and differs from a permit for construction, modification, or relocation and operation.

The Associations are concerned that the retention of Section 5.8, which allows 180 days for action on an existing stationary source operating permit, will result in great confusion within the regulated community, and may be interpreted to conflict with 5.7.a, which allows the DAQ 90 days to act on an application for a permit to construct, modify <u>and operate</u>. We suggest that the existing stationary source operating permit provisions be removed all together (Sections 2.12, 5.5 and 5.8).

The Associations are also concerned with the DAQ's proposed addition of the words "operate" or "operation" throughout the proposed rule. Sec. 1.1 of the proposed rule adds the phrase "or operation" in the sentence "[s]uch construction, modification, relocation or operation without a permit is a violation of this rule." It is the Associations' position that once the construction permit is issued for a source, a separate authorization is not required by the Act for the operation of a minor source. For this reason the proposed insertion of "or operation" in the quoted sentence should not be made.

Elsewhere in the proposed rule similar changes have been proposed. Section 5.0 of the rule pertains to the issuance of permits for construction of and modifications to stationary sources. In section 5.1, the DAQ has revised the current language so that no person shall allow the construction, modification, relocation or operation of a stationary source until they have obtained a permit to construct, modify, relocate or operate. It is unclear why the DAQ has proposed the addition of these words. The recent statutory revisions do not contemplate such changes. Furthermore, the inclusion of the terms "or operate" and "or operation" in this section is contrary to the Act as well as being confusing and unnecessary. Construction, modification or relocation permits have always included operating conditions and DAQ has never required a separate minor operating permit in the past. The proposed addition of the terms "operate" and "or operation" can be read as an attempt to circumvent the revised statute and implement a minor source operating permit program, when such a program was never intended to be authorized under the revised statue. A source can obviously not operate if it has not obtained a construction, modification or relocation permit first. Similar changes have been proposed in Sections 5.2, 5.4, 5.6, 5.7, 5.10, 5.12 and 7.1. We do not believe that these changes are necessary, will only confuse the regulated community, and should be removed from the final rule.

II. Public Review Procedures

Section 8 of the rule sets forth the procedures for the public review of permit applications. Section 8.1. has been revised to incorporate "sources seeking permission to construct". This revision appears to refer to the new Section 16 for applications for permission to commence construction in advance of permit issuance. To clarify, we propose that Section 8.1. be revised to include the following words, as underscored: "sources seeking permission to construct in advance of permit issuance...". This same revision should be made to the first sentence in Section 10.1.

Section 8.3 contains the requirements for notice level A. This section includes the statement that "No such permit or general permit registration shall be issued to any applicant until at least (30) days notice has been provided to the public." In order to prevent this section from conflicting with the notice requirements in Section 16, we propose that this sentence begin with: "Unless otherwise provided for in this rule, no such permit or general permit registration shall be issued to any applicant until at least (30) days notice has been provided to the public."

III. Application for Permission to Commence Construction in Advance of Permit Issuance

For the most part, it appears as if the Agency has incorporated the statutory revisions which provide for the construction in advance of permit issuance provisions, in Section 16 of the proposed rule. However, we have a few suggestions to clarify certain provisions.

In Section 16.3.b, we suggest that the word "article" be changed to the word "rule".

In Section 16.4.b, the public notice provisions from section 6 have been incorporated wholesale. Since no air pollutants will be discharged during the construction in advance of permit issuance, we believe the requirement to include "the type and amount of air pollutants that will be discharged" should be removed from 16.4.b.

The Associations appreciate this opportunity to provide comments on the proposed revisions to 45 CSR 13 and look forward to the implementation of the recent statutory changes. We are also appreciative of the cooperation of the Agency in developing these proposed changes and in the accurate implementation of such changes in the rule.

Sincerely,

Karen S. Price/ACB

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Signed this 11th day of August, 2008.

45CSR13

PERMITS FOR CONSTRUCTION, MODIFICATION, RELOCATION AND OPERATION OF STATIONARY SOURCES OF AIR POLLUTANTS, NOTIFICATION REQUIREMENTS, ADMINISTRATIVE UPDATES, TEMPORARY PERMITS, GENERAL PERMITS, AND PROCEDURES FOR EVALUATION

RESPONSE TO COMMENTS

On July 11, 2008, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on August 11, 2008 to accept oral comments on proposed revisions to legislative rule 45CSR13. Written comments were also accepted through 6:00 PM on Monday, August 11, 2008. Three commenters submitted written comments regarding proposed revisions to rule 45CSR13, and no commenter provided verbal comments. DAQ addresses the written comments below.

I. COMMENTER: U.S. Environmental Protection Agency

COMMENT A. The commenter states, *"40 CFR Section 51.161(a) requires the following information to be included as information available for public comment, 'the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval.' Rule 45-13-8.7 requires that, 'prior to issuance of any permit subject to public notice under subsections 8.4 or 8.5, prepare an engineering evaluation supporting his or her stated intent to issue such a permit and shall transmit to U.S. EPA and any other interested party which so requests, a nonconfidential copy of the engineering evaluation and a draft copy of the permit which is proposed for issuance.' Can the West Virginia Department of Environmental Protection (WVDEP) confirm that the type of information or an equivalent of the information required in 40 CFR Section 51.161(a) is covered by the materials made available through 45-13-8.7 or is otherwise made available for public comment, for each type of permit issued pursuant to the requirements of subsection 8.4 or 8.5, and explain whether such materials are available to the public for permits issued pursuant to subsection8.3."*

RESPONSE A. Rule 13 was proposed to incorporate only those changes required by the passage of H.B. 4438 by the West Virginia Legislature. The DAQ is not addressing comments or otherwise proposing revisions to the rule unaffected by the passage of H.B. 4438.

COMMENT B. The commenter states, *"EPA understands the process for permit application and reporting requirements for construction of and modifications to stationary sources laid out in rules 45-13-5.7(a) and 45-13-5.7(b). However, EPA unclear about the process laid out in 45-13-5.7(c) for action on complete temporary or relocation permit applications. EPA believes that the 30 day completeness review required by 45-13-5.9 pertains to permits issued pursuant 45-13-5.7(a), (b) and (c). However, we are not certain why these provisions use non-identical language to address the* *completeness criteria. We are concerned that use of different language in the 45-13.5.7(c) – as compared to 45-13.5.7(a) and (b) – when referring to the completeness requirement may cause confusion on the regulated community if West Virginia does not provide clarification of how the 45-13-5.9 completeness determination works within the time frames specified by 45-13-5.7(c)."*

RESPONSE B. For all permit applications submitted under section 5.7 the DAQ has 30 days to determine if the application is complete. The process for determining completeness is unchanged. However, language passed in H.B. 4438 specifically changed when the time clock for review of an application (after it has been deemed complete) begins for applications submitted under sections 5.7.a and 5.7.b. Therefore, DAQ has not revised the rule.

COMMENT C. The commenter states, *"It is EPA's experience that netting analysis often lack adequate information, contain errors, and reach inappropriate conclusions. Sources that are 'netting out' of the major source preconstruction permitting provisions have a greater likelihood of ultimately being subject to the major source provisions and its intended control technology requirements than other classes of minor sources or minor modifications. If such a source is authorized to begin construction on their new source or modification and it is later determined that the application in fact represents a new major source or major modification, it is likely that the applicant may be required by their construction permit to redesign the source to include pollution control equipment. EPA continues to believe that these types of sources do not make good candidates for advance construction."*

RESPONSE C. Applicants seeking to "net out" of major source permitting rules by seeking federally enforceable permit limitations in a Rule 13 permit are not eligible for permission to construct in advance of permit issuance under Section 16.2.b. Sources seeking a synthetic minor from MACT, Title V or PSD/NSR are not eligible for permission to construct in advance of permit issuance under section 16.2.b. Therefore, DAQ has not revised the rule.

COMMENT D. The commenter states, *"The term 'federally enforceable is used in 45-13-16.2(b) as a term of art is undefined in section 45-13-2 of the regulations. EPA suggests that WVDEP add the definition of 'federally enforceable' from 45-14-2.29 to 45-13-2 to clarify the use of the term in 45 CSR 13."*

RESPONSE D. As a SIP approved program all permits issued under Rule 13 are federally enforceable. The rule contains the definition of "enforceable" at section 2.10, "means enforceable by the Secretary and U. S. EPA unless specifically designated to mean otherwise in this rule". Section 16.2.b contains the term enforceable, which is defined in the rule. Therefore, DAQ has not revised the rule.

II. COMMENTER: West Virginia Chamber of Commerce, West Virginia Manufacturers Association, and West Virginia Oil and Natural Gas Association

COMMENT A. The commenter states, *"The Associations are concerned that the retention of Section 5.8, which allows 180 days for action on an existing stationary source operating permit, will* *result in great confusion within the regulated community, and may be interpreted to conflict with 5.7.a, which allows the DAQ 90 days to act on an application for a permit to construct, modify and operate. We suggest that the existing stationary source operating permit provisions be removed all together (Sections 2.12, 5.5, and 5.8)."*

RESPONSE A. The provisions set forth in subsections 2.12, 5.5, and 5.8 were incorporated into Rule 13 in 1994 in order to facilitate interaction between Rule 13 and Title V (Rule 30) permitting. The original time allotted was 12 months which was later reduced by the DAQ to 180 days in the 2000 rule revisions.

The intent of this provision is to allow existing sources who need to take federally enforceable state operating permit limits (FESOP) a mechanism in which to discuss, negotiate, and incorporate voluntary limitations into a federally enforceable permit. With the recent CAIR vacatur, Boiler MACT vacatur, 112(j) MACT Hammer provisions, and recent non-attainment designations making reasonably available control technology (RACT) reviews likely, the DAQ believes that the FESOP provisions will be needed by industry and the DAQ. These kinds of reviews are very complicated and in no way prevent a source from constructing and operating. Specifically, industries seeking a FESOP are not subject to the same timing pressures as sources wishing to build or expand their facilities.

The commenters have pointed out that the provisions of H.B. 4438 do not allow for an extended period of review for these types of activities. However, the DAQ believes that the FESOP provisions were not envisioned as being part of the overall reduction in permitting timelines and believes that elimination of this provision may be detrimental to both the DAQ and industry. The language currently in the rule at subsections 2.12., 5.5., and 5.8. is authorized under the West Virginia Code §22-5-12, "Operating Permits Required for Stationary Sources of Air Pollution," not §22-5-11, the subject of H.B. 4438. Therefore, DAQ has not revised the rule.

COMMENT B. The commenter states, *"The Associations are also concerned with the DAQ's proposed addition of the words 'operate' or 'operation' throughout the proposed rule....It is the Associations' position that once the construction permit is issued for a source, a separate authorization is not required by the Act for the operation of a minor source. For this reason the proposed insertion of 'or operation' in the quoted sentence should not be made....Construction, modification or relocation permits have always included operating conditions and DAQ has never required a separate minor operating permit in the past. The proposed addition of the terms 'operate' and 'or operation' can be read as an attempt to circumvent the revised statute and implement a minor source operating permit program, when such a program was never intended to be authorized under the revised statute. A source can obviously not operate if it has not obtained a construction, modification, or relocation permit first....We do not believe that these changes are necessary, will only confuse the regulated community, and should be removed from the final rule."*

RESPONSE B. Permits and registrations issued under Rule 13 have always been construction and operation actions. As the commenter points out these permits and registrations have always contained operating parameters and conditions. The title of the rule itself has always contained the phrase "and operation". It is not the intent of DAQ to create a new or separate operating permit in

Rule 13. Instead the addition of the terms "operate" and "or operation" are meant to clarify the difference between the Permission To Construct In Advance Of Permit Issuance provisions of the new section 16 and the original Permit To Construct (and operate) in section 5.

It is important to note that section 16 specifically prevents the operation of a source allowed to construct under this section until a permit is issued. A source seeking permission to construct under section 16 must also apply for and be issued a permit or general permit registration as required in section 5 of the rule. To further clarify, however, the DAQ has changed all of the "or operates" to "and operates."

COMMENT C. The Commenter states, *"To clarify, we propose that Section 8.1 be revised to include the following words as underscored: 'sources seeking permission to construct <u>in advance of permit issuance</u>...'. This same revision should be made to the first sentence in Section 10.1"*

RESPONSE C. The DAQ agrees to clarify the proposed change to subsection 8.1, as follows: 'sources seeking permission to construct <u>in advance of permit issuance</u>....'. The revision in this response will add clarity to the language and the change has been made.

Subsection 10.1 does not apply to actions issued under section 16. Rule 13 permits and registrations do not expire. Therefore the rule contains a mechanism to transfer permits when facilities are bought and sold. This mechanism (subsection 10.1) includes timing provisions such as the requirement to submit the request at least 30 days in advance of any proposed transfer and allow the Secretary 30 days after receipt of such a request to notify the existing and proposed new permittee, in writing, of the Secretary's decision on the request.

As the intent of section 16 is to create a mechanism for quicker construction of a source that cannot wait the 45 to 90 days for a permit to be issued, and once a permit is issued it will supersede any granted Permission To Construct, the timing provisions of subsection 10.1 would prevent the transfer of such permission before a permit or registration is issued. Therefore, DAQ has not revised subsection 10.1.

COMMENT D. The commenter states, *"Section 8.3 contains the requirements for notice level A....In order to prevent this section from conflicting with notice requirements in Section 16, we propose that this sentence begin with: 'Unless otherwise provided for in this rule, no such permit or general permit registration shall be issued to any applicant until at least (30) days notice has been provided to the public.'"*

RESPONSE D. The DAQ believes this change is not consistent with the language of the rule. As stated in subsection 8.3, "No such permit or general permit registration shall be issued..." Permission To Construct In Advance Of Permit Issuance is not a permit. Section 16 clearly states the public notice provisions for this activity and is not in any way connected with subsection 8.3. Therefore, DAQ has not revised subsection 8.3.

COMMENT E. The commenter states, *"In section 16.3.b, we suggest that the word 'article' be changed to the word 'rule'".*

RESPONSE E. The DAQ agrees that this change in language is appropriate and has made the change in the agency-approved rule.

COMMENT F. The commenter states, *"In Section 16.4.b, the public notice provisions from Section 6 have been incorporated wholesale. Since no air pollutants will be discharged during the construction in advance of permit issuance, we believe the requirement to include 'the type and amount of air pollutants that will be discharged' should be removed from 16.4.b."*

RESPONSE F. The DAQ respectfully disagrees. From the public's perspective, it is often the very commencement of construction for which they have most concern and likelihood of comment. All public notice requirements for permitting actions involving construction currently issued by West Virginia (Rules 13, 14, and 19) require that the notice contain the types and amounts of air pollutants to be discharged. Section 16.3.d. specifically requires "an estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit" be submitted as part of the application. Further, the determination made under subsection 16.6 is highly dependent upon the types and amounts of air pollutants to be discharged, and it is in the public interest to provide this information via public notice. Therefore, DAQ has not revised the rule.

III. COMMENTER: Sierra Club

COMMENT A. The commenter objects to the reduction in the application review times as proposed by the rule. Commenter further states, *"In many cases, permits must also be reviewed by other agencies, including federal land managers, and environmental agencies in adjoining states...."* Of even greater concern is the time needed to provide technical review of permits by the public. We recommend that the proposed language be revised to allow 120 days for permit review, with an additional 60 days when the Secretary receives a request for additional time for public comment or when the source constitutes a major source. Alternatively, the rule should be revised to require that all public and agency comment has been received before the permit is determined to be 'administratively complete.'

RESPONSE A. The language reducing the application review times for permit applications in the proposed rule passed in H.B. 4438 directly revised the underlying statute upon which Rule 13 is based and prescribes specific language. The DAQ must adopt language that is authorized by and consistent with language passed by the West Virginia legislature.

It should be noted that while many minor source permits issued under Rule 13 are provided to U.S. EPA as part of the rule requirements, in general, Rule 13 permitting activity is not required to be reviewed by other agencies, federal land managers or environmental agencies in adjoining states. Requirements for such notifications exist in West Virginia's major source permitting rules

(45CSR14, 45CSR19, and 45CSR30). Therefore, DAQ has not revised the rule.

COMMENT B. The commenter states, *"At a minimum, the applicant should be required to submit information documenting that the emissions limits and pollution control technologies will comply with the Best Available Control Technology requirements of the Clean Air Act. This should include a listing of the best performing comparable facilities, the emissions levels that have been permitted and have been achieved, and a review of permit limits issued recently for comparable facilities elsewhere."* The commenter also included specific language they wished inserted into the rule as subdivision 16.3.k.

RESPONSE B. The language in section 16 of the rule was passed in H.B. 4438 on March 8, 2008. The DAQ must adopt language that is authorized by and consistent with language passed by the West Virginia legislature. It should be noted that no source being issued any permitting action under Rule 13 undergoes Best Available Control Technology (BACT) review. This type of application review is a Federal Clean Air Act requirement for sources subject to major source permitting incorporated into West Virginia's major source permitting Rule 14. Therefore, DAQ has not revised the rule.

COMMENT C: The commenter states, *"The rule already requires that the Secretary find that the permission to construct would not jeopardize attainment areas, this amendment* (commenter proposed specific language to be inserted as subdivision 16.2.d) *simply clarifies that no permits would therefore be allowed in non-attainment areas."*

RESPONSE C: The language in section 16 of the rule was passed in H.B. 4438 on March 8, 2008. The DAQ must adopt language that is authorized by and consistent with language passed by the West Virginia legislature. It should be noted that any source granted permission to construct under the provisions of section 16 of the rule must be an existing source. New sources are not eligible for this provision. Also, all sources seeking a permitting action under Rule 13 must show that they will not cause or contribute to a violation of a national ambient air quality standard (NAAQS). NAAQS are the standards set to determine attainment and non-attainment. Therefore, DAQ has not revised the rule.

COMMENT D: The commenter states, *"Section 16.6.a. requires that the Secretary determine that an applicant for permission to construct be 'in substantial compliance' with all other active permits for the last three years. Unfortunately, the term 'substantial' is not defined, and leaves excessive discretion for the Secretary to overlook or disregard significant non-compliances with existing active permits.... The Clean Air Act does not distinguish 'substantial' and 'insubstantial' violations. Even routine reporting problems are considered substantial because these are crucial to the monitoring and enforcement of air permit conditions. For these reasons we recommend deleting the word 'substantial' from this section."*

RESPONSE D: The language in section 16 of the rule was passed in H.B. 4438 on March 8, 2008. The DAQ must adopt language that is authorized by and consistent with language passed by the West Virginia legislature.

West Virginia legislature. Therefore, DAQ has not revised the rule.

COMMENT E: The commenter states, *"Sections 16.6.b-f. identify conditions for issuance of a permit to begin construction. Unfortunately, the wording appears overly broad, and would allow construction to begin on facilities that do not meet BACT requirements of the Clean Air Act.... These sections should be rewritten to require that the applicant document the current Best Available Technology at comparable facilities elsewhere. Although it could be argued that Section 16.6.b. already implies such application requirements, the rule should state this explicitly."*

RESPONSE E: The language in section 16 of the rule was passed in H.B. 4438 on March 8, 2008. The DAQ must incorporate the language as passed by the West Virginia Legislature. It should be noted that no source being issued any permitting action under Rule 13 undergoes Best Available Control Technology (BACT) review. This type of application review is a Federal Clean Air Act requirement for sources subject to major source permitting incorporated into West Virginia's Rule 45CSR14. Therefore, DAQ has not revised the rule.