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## BUREAU OF THE ENVIRONMENT

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Cecil H. Underwood  
Governor

Michael C. Castle  
Commissioner

September 7, 1999

Judy Cooper, Director  
Administrative Law Division  
Office of the Secretary of State  
Capitol Complex  
Charleston, WV 25305

RE: 45CSR13 – “Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits and Procedures for Evaluation”

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as “Notice of Public Hearing on a Proposed Rule.”

If you should have questions or require additional information, please contact Carrie Chambers in my office at 759-0515. Your cooperation in this regard is very much appreciated.

Sincerely,

Michael C. Castle  
Director

MCC:jlw

cc: Edward L. Kropp  
Karen G. Watson  
Carrie Chambers

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**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 §§22-5-1 et seq.

**B. SUMMARY OF RULE:**

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. Such construction, modification, or relocation 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, temporary permit or a general permit, and for filing notifications of changes not otherwise subject to the permit requirements of this rule. The rule establishes public participation requirements as well as procedures for the transfer, suspension and revocation of permits.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The purpose of 45CSR13 is to establish permitting requirements as stated above. 45CSR13 is part of the West Virginia State Implementation Plan (SIP) approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Office rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

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

There is no equivalent 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:**

The Advisory Council will have the opportunity to consult with the Director at the Council's meeting on September 9, 1999. The Council's recommendations and the Director's response to any recommendations will be included in the filing of an agency-approved rule with the Secretary of State and the Legislative Rule-Making Review Committee.

**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:  Office of Air Quality

Address:  1558 Washington Street, East   
 Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$-0-	\$-0-	\$-0-	\$-0-	\$-0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The revisions to 45CSR13 proposed herein will have minimal effect on the costs to the Office of Air Quality and implementation will be absorbed into the existing work environment. Costs are covered under previous budget estimates.
  
3. Objectives of these rules: This rule, originally promulgated in 1974 and amended in 1994, 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, 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. 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 of changes not otherwise subject to the permit requirements of the rule. The rule establishes public participation requirements as well as procedures for the transfer, suspension and revocation of permits.

Rule revisions to 45CSR13 are proposed to incorporate appropriate revisions discussed in numerous stakeholder meetings between representatives of the agency, industry and the environmental community. The rule is also part of the West Virginia State Implementation Plan approved by the USEPA for attainment and maintenance of attainment of the National Ambient Air Quality Standards.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

There will be no economic impact on political subdivisions or the regulated community in West Virginia resulting from the revisions contained herein. There may, in fact, be a beneficial effect on the regulated community due to the revisions relating to permit applicability, such as Tables 45-13B and 45-13C for "de minimis" sources.

C. Economic Impact on Citizens/Public at Large.

There will be no economic impact on the citizens or public at large in West Virginia resulting from the revisions contained herein.

Date: 9/8/99

Signature of Agency Head or Authorized Representative

Karen G. Watson, Attorney

45CSR13

TITLE 45  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

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OFFICE OF THE ATTORNEY GENERAL  
STATE OF WEST VIRGINIA

SERIES 13  
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

**§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 ~~which has not been issued a permit pursuant to 45CSR30,~~ and to relocate non-major stationary sources within the state of West Virginia. Such construction, modification, or relocation 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, and for filing notifications of changes not otherwise subject to the permit requirements of this rule.

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

1.3. Filing Date -- ~~April 27, 1994.~~

1.4. Effective Date -- ~~April 27, 1994.~~

1.5. Former Rules. -- This legislative rule amends and replaces 45CSR13 "Regulations Pertaining to Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation" "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits and Procedures for Evaluation" which was filed on ~~April 29, 1974~~ April 27, 1994, and which became effective ~~June 1, 1974~~ April 27, 1994.

**§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 Director 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 Director 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 at the Director's discretion.

2.2. ~~"Air pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution. "Administrative update" shall mean any revision of a current and valid permit which meets the provisions of section 4.~~

2.3. ~~"Air pollution" and "statutory air pollution" shall have the meaning ascribed to it in W. Va. Code §22-5-2~~

2.4. [RESERVED]

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

2.64. "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.

2.7. [Reserved]

2.85. "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 minimus source" means any equipment or activity, individually or in the aggregate, listed in Table 45-13B or Table 45-13C. A "de minimus 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 Tier I equipment or activities listed in Table 45-13B do not need to be aggregated by the source unless otherwise required by the Director. Aggregated emissions from Tier II equipment or activities listed in Table 45-13C shall be quantified and monitored by the facility for purposes of determining whether a "modification" or "construction" has occurred at the facility.

2.6.a. Unless otherwise determined by the Director, emissions from a de minimus source shall not be included in determining the "potential to emit" for purposes of 45CSR13, 45CSR14 and 45CSR19 applicability. However, in implementing the permitting program under this rule, the Director may require emissions information for de minimus sources for inclusion in a permit review. Sources located in nonattainment areas may not be eligible to use Table 45-13B or Table 45-13C for the pollutant or its precursors for which the area is in nonattainment. Inclusion of an activity 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. Any Tier I or Tier II activity listed in Table 45-13B or Table 45-13C which serves to amend or change (e.g., debottleneck) a process operation shall be used in determining whether the aggregate of all upstream and downstream emissions constitute "modification" or "construction" pursuant to section 5. In no case shall any Tier I or Tier II activities be separated by category or time to circumvent the permitting requirements of 45CSR13, 45CSR14 or 45CSR19.

2.6.c. Activities listed in Tier I of Table 45-13B do not require any monitoring, recordkeeping or reporting unless specifically requested by the Director or a duly authorized representative. Activities and emissions from activities listed in Tier II of Table 45-13C require such monitoring and recordkeeping by the source which shall be kept on-site for a minimum of two (2) years and which shall be utilized to demonstrate whether the source is subject to an applicable permitting requirement under this rule. Submission of records for Tier II activities are not required unless specifically requested by the Director or a duly authorized representative. All such records shall be available for review upon request of the Director or a duly authorized representative. Emissions from Tier II activities are to be aggregated by the source in determining whether a "modification" or "construction" has occurred at the facility.

2.6.d. Notwithstanding any other requirements and standards of this rule, a facility may use the procedures described in section 5 to petition the agency for a determination of regulatory applicability for a particular activity that may meet the criteria for a "de minimus source" and is not specifically listed in Table 45-13B or Table 45-13C.

2.7. "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

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

~~2.10. "Division of Environmental Protection" or "DEP" means West Virginia Division of Environmental Protection as created by the provisions of W.Va. Code §22-1-1, et seq.~~

~~2.119. "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.~~

~~2.1210. "Enforceable" means enforceable by the Director and U. S. EPA unless specifically designated to mean otherwise in this rule.~~

~~2.1311. "EPA" or "U. S. EPA" means the United States Environmental Protection Agency.~~

~~2.1412. "Existing stationary source operating permit" means a permit issued by the Director 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 Director and the owner or operator.~~

45CSR13

~~2.1513.~~ "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

~~2.1614.~~ "Hazardous air pollutant" means any substance listed on ~~Table 45-13B~~ pursuant to section 112(b) of the Clean Air Act.

~~2.1715.~~ "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.

~~2.1716.~~ "Major stationary source" shall have the meaning ascribed to this term in 45CSR14, 45CSR19, or 45CSR30, means:

~~2.17.a.~~ In all areas which are in attainment with the National Ambient Air Quality Standards or unclassifiable relative to these standards:

~~a.1.~~ Any stationary source which emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant and is one of the stationary sources named in Table 45-13A of this rule;

~~a.2.~~ Any stationary source which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated air pollutant and is not one of the stationary sources named in Table 45-13A of this rule; or

~~a.3.~~ Any physical change at a stationary source if the change itself would constitute a major stationary source:

~~2.17.b.~~ In all areas which are formally designated by U.S. EPA as areas not attaining the National Ambient Air Quality Standards:

~~b.1.~~ Any stationary source of air pollutants which emits or has the potential to emit one hundred (100) tons per year or more of any regulated pollutant for which a National Ambient Air Quality Standard is not attained; or

~~b.2.~~ Any physical change that would occur at a stationary source not qualifying under paragraph 2.17.b.1. above as a major stationary source if the change would constitute a major stationary source by itself:

~~2.17.c.~~ Notwithstanding the major source size specified in paragraph 2.17.b.1. of this rule, the following source sizes are also defined as major stationary sources:

~~c.1.~~ In serious ozone nonattainment areas, sources which emit or have the potential to emit fifty (50) tons per year or more of VOC or fifty (50) tons per year or more of  $\text{NO}_x$ ;

~~c.2.~~ In severe ozone nonattainment areas, sources which emit or have the potential to emit twenty-five (25) tons per year or more of VOC or twenty-five (25) tons per year or more of  $\text{NO}_x$ ;

~~c.3.~~ In extreme ozone nonattainment areas, sources which emit or have the potential to emit ten (10) tons per year or more of VOC or ten (10) tons per year or more of  $\text{NO}_x$ ;

~~c.4.~~ In serious carbon monoxide nonattainment areas, sources which emit or have

~~the potential to emit fifty (50) tons per year or more of carbon monoxide; or~~

~~c.5. In serious PM<sub>10</sub> nonattainment areas, sources which emit or have the potential to emit seventy (70) tons per year or more of PM<sub>10</sub> or PM<sub>10</sub> precursors.~~

~~2.1817. "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:~~

~~2.1817.a. Results in an emissions increase of two six (26) pounds per hour or more or five (5) tons per year or more of any regulated air pollutant other than a hazardous or toxic air pollutant; or~~

~~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; or~~

~~2.1817.bc. Results in any increase in emissions of a hazardous or toxic air pollutant listed in Table ~~45-13B~~45-13A of 10 percent or more of the amount set forth in Table 45-13A at a facility which, prior to the modification, has the potential to emit the hazardous or toxic air pollutant at or above the amount set forth in Table ~~45-13B~~45-13A; provided that nothing in this subdivision shall affect the facility's obligation to comply with 45CSR27; or~~

~~2.1817.cd. Results in an increase in emissions of any hazardous or toxic air pollutant listed in Table ~~45-13B~~45-13A that would in turn result in total emissions of the hazardous or toxic air pollutant at the stationary source equal to or greater than the amounts in Table ~~45-13B~~45-13A; ~~or~~~~

~~2.1817.de. Results in any regulated air pollutant emissions increase for which the owner or operator of a source facility voluntarily chooses to obtain a modification permit pursuant to this rule, even though the owner or operator is not otherwise required to do so.:~~

~~2.1817.f. The following actions, however, shall not constitute a modification of a stationary source:~~

~~d.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;~~

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

~~d.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;~~

~~d.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 in an applicable permit or order; or~~

~~d.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. Upon written request, the Director may determine that a physical change

results in an emissions reduction 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.

2.198. "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, or association or business entity of whatever nature.

~~2.2019.~~ "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 Director and USEPA 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 measured after the control device. Said control device must be interlocked in such a way as to not allow operation of the engine without operation of the control device. The catalytic converter shall have the catalyst replaced every five (5) years from the date of start-up or in accordance with the manufacturer's recommendation, whichever is sooner.

2.19.b. Upon written petition by a facility that an air pollution control device is inherent to the emission unit, the Director may rule on a case-by-case basis that potential to emit may be determined after the control. "Inherent to the emission unit" shall mean that the emission unit cannot be operated without the air pollution control device being properly maintained (e.g., low NO<sub>x</sub> burners).

~~2.2120.~~ "Regulated air pollutant" for the purpose of this rule means the following:

~~2.2120.a.~~ Nitrogen oxides (NO<sub>x</sub>); ~~any~~ volatile organic compounds (VOCs), or particulate matter;

~~2.2120.b.~~ Any air pollutant for which a national ambient air quality standard has been promulgated including particulate matter (PM<sub>10</sub>), sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone and lead or lead compounds;

~~2.2120.c.~~ Any hazardous or toxic air pollutant listed on table 45-13B; or Any air pollutant that is subject to a new source performance standard (NSPS) promulgated under section 111 of the Clean Air Act [including section 111(d)], which require new and modified sources to satisfy emissions standards, work practice standards and other requirements;

~~2.2120.d.~~ Any other air pollutant subject to an emission standard promulgated by the Director including mineral acids in 45CSR7.

2.20.e. 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.

2.20.f. 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).

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

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

2.232.a. For a corporation or 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 Director;

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

2.232.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

2.232.d. The designated representative delegated with such authority and approved in advance by the Director.

2.243. "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.

2.254. "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:

2.254.a. ~~Is subject to any emission control rule promulgated by the Director; or~~

~~2.25.b. Discharges or has the potential to discharge more than six (6) pounds per hour or five (5) tons per year of volatile organic compounds or any regulated air pollutant for which the Director has promulgated an ambient air quality standard; or~~

~~2.24.b. 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 aggregate basis; or~~

2.254.c. Discharges or ~~may~~ has the potential to discharge any hazardous or toxic air pollutant(s) listed in Table 45-13B45-13A in the amounts shown in Table 45-13B45-13A or greater; or

2.254.d. An owner or operator voluntarily chooses to be subjected to a construction or modification permit pursuant to this rule, even though not otherwise required to do so; or

2.24.e. A source which has not operated at least 500 hours in one 12-month period within the previous five (5)-year time period will be considered permanently shutdown. Unless such source can provide to the Director, with reasonable specificity, information to the contrary, all permits may be revoked and/or reapplication or application for new permits may be required.

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. "Toxic air pollutant" means any of the following substances which are included on Table ~~45-~~45-13A: Acrylonitrile, Allyl chloride, Benzene, 1,3-Butadiene, Carbon tetrachloride, Chloroform, Ethylene dichloride, Ethylene oxide, Formaldehyde, Methylene chloride, Propylene oxide, Trichloroethylene, Vinyl chloride, Vinylidene chloride.

2.27. "Volatile Organic Compounds" (VOC) means ~~any organic compound that participates in atmospheric photochemical reactions. This includes any organic compound other than the following exempt compounds:~~ methane, ethane, methyl chloroform (1,1,1-trichloromethane), CFC-113 (trichlorotrifluoroethane), methylene chloride, CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoroethane), CFC-22 (chlorodifluoromethane), CFC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-141b (dichlorofluoroethane), HCFC-142b (chlorodifluoroethane), HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane), HFC-125 (pentafluoroethane), HFC-134 (1,1,2,2-tetrafluoroethane), HFC-143a (1,1,1-trifluoroethane), HFC-152a (1,1-difluoroethane), and perfluorocarbon compounds which fall into these classes:

~~2.27.a. Cyclic, branched, or linear, completely fluorinated alkanes;~~

~~2.27.b. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;~~

~~2.27.c. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or~~

~~2.27.d. Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine; the term as defined in 40 CFR §51.100 (s).~~

2.28. 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 Registered and Permitted Stationary Sources.**

3.1. The owner or operator of a stationary source ~~that is registered or permitted pursuant to this rule~~ may be required by the Director to collect, report and maintain data on the operation of such stationary source. The Director, or his duly authorized representative, may request reports of such data in a reasonable manner and detail as the Director may specify. If requested, such reports shall be filed within ~~fifteen (15)~~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.**

45CSR13

4.1. Upon the request of the permittee, or with the permittee's consent, the Director may update a valid existing permit issued pursuant to this rule as necessary to incorporate any administrative update identified in subsection 4.2.

4.1.a. At the Director'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 Director may take final action on such a request by:

4.1.b.1. Issuing the administrative update as requested or upon the Director's initiative;

4.1.b.2. Issuing the administrative update with additional reasonable conditions than 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 applicable rules of the Director.

4.1.c. Should the Director deny an administrative update request, he or she shall do so in writing, providing the reasons therefore. Such 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 Director may incorporate changes to a permit 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 Director intend to make an administrative update to a permit pursuant to this section upon his or her own initiative, or to make changes to the permittee's application for an administrative update, the Director 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 Director takes any of the actions specified in subdivision 4.1.b.

4.2. Administrative updates to a valid existing permit issued pursuant to this rule are authorized with respect to any aspect of the permitted source 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 permit determination/notification request under subsection 5.13 that the agency determines will also require an administrative update shall comply with this section.

4.2.a. Class I administrative updates shall include 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 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 Director 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 shall include 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 Director.

4.3. A person requesting an administrative update of a permit shall submit such information as the Director 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 Director 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 Director to demonstrate that 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 permit to a valid existing permit pursuant to this section shall submit a permit application fee of three hundred dollars (\$300).

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

45.1. No person shall cause, suffer, allow or permit the construction, modification, or relocation of any stationary source to be commenced without notifying the Director of such intent and obtaining a permit to so construct, modify, or relocate the stationary source as required in this rule or any other applicable rule promulgated by the Director. 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

## 45CSR13

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, 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 such purposes; or

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

5.2. Prior to obtaining a permit to construct, a source may not cause the erection or installation of an emissions unit.

5.3. All activities listed under subdivisions 5.1.a. through 5.1.h. 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.

45.24. Any person proposing to construct, modify or relocate a stationary source after the effective date of this rule shall file a complete permit application with the Director and shall not construct, modify or relocate such stationary source until the Director issues a permit approving of such construction, modification or relocation. Such application shall contain sufficient information as, in the judgment of the Director, will enable the Director to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any applicable rules promulgated by the Director. 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.

45.35. Any person who owns or operates an existing stationary source may voluntarily request a permit to operate such 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 Director. The issuance of existing stationary source operating permits by the Director shall be in accordance with all provisions of this rule including public participation provisions under Section 68.

45.46. All permit applications under this rule shall be signed by a responsible official of the entity which will own or operate the stationary source, and such 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 Director, and W. Va. Code §22-15-1; et seq.

45.57. Within one hundred eighty (180) days of the receipt of a complete permit application for construction or modification of a stationary source or within forty-five (45) days of receipt of a complete application for relocation of a stationary source, the Director shall issue such permit unless a determination is made that the proposed construction, modification, 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 §22-15-1; et seq., in which case an order for the prevention of such construction, modification, or relocation shall be issued. The Director shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship.

45.68. The Director shall complete a review of any application for an existing stationary source operating permit within twelve (12) months 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 Director or if the Director determines that acceptable compliance determination provisions cannot be incorporated to satisfy permit terms requested by the permit applicant.

45.79. The Director 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 Director to be necessary for permit approval. The Director shall act upon all applications, however, the periods set forth in this subsection for application review by the Director shall not be deemed to have begun until such time as the permit application is deemed complete.

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

45.911. The Director may impose any reasonable condition as part of a granted 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 Director shall impose or incorporate, consistent with all applicable rules, such enforcement conditions which assure that

all emission limitations contained within the permit are quantifiable, permanent and practicably enforceable. The Director may, on the basis of information provided in a permit application and other documented relevant information 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 rule.

~~45.40~~12. The Director may develop and issue facility-wide general permits under this rule authorizing the construction, modification or relocation 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.

~~45.41~~13. The owner or operator of any ~~new-stationary source or existing stationary source (requiring registration under previous versions of this rule)~~ 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 pollutant, in an amount below the levels which require a permit to modify, excluding the activities listed in Tables 45-13B and 45-13C, shall notify the Director 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 Director shall notify the owner or operator in writing if the Director 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.

~~45.42~~14. Any person holding a permit issued pursuant to subsection ~~4-3-5.5~~ may make a written request to the Director for a cancellation of such permit. If granted by the Director, such a cancellation shall not excuse any violation of the permit terms or conditions prior to the Director's cancellation of such permit. In no case shall such a permit cancellation become effective until the permittee and U.S. EPA are provided with a sixty (60) day written notice of such a permit cancellation.

#### **§45-13-56. Determination of Compliance of Stationary Sources.**

56.1. 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 Director thereafter, appropriate tests consisting of visual determinations or conventional in-stack measurements or such other tests as the Director may specify shall be conducted to determine such compliance.

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

6.3. If a source after completion of a stack test required by the Director fails to prove compliance with such stack test, the source shall immediately take steps approvable by the Director which shall assure compliance, including but not limited to, 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 Director in determining whether the proposed construction, modification or relocation 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.

#### **§45-13-68. Public Review Procedures.**

~~6.1. The Director shall maintain for public review a permit application list of proposed new stationary sources, source modifications, or relocations or applications for operating permits containing the name of the applicant, the type and location of the source, and the proposed start-up date for a proposed new stationary source, modification, or relocation. No permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public by the applicant of the application in accordance with Section 6.2 and the application has been on the permit application list for at least thirty (30) days for construction, modification, or relocation.~~

~~6.2. At the same time that an application for a stationary source permit is filed with the Director, 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. 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 new, modified or relocated sources.~~

~~6.3. During the time periods specified in Subsection 6.1. that an applicant's name appears on the permit application list, the Director will receive and evaluate written comments relating to the permit application.~~

~~6.4. The Director shall, prior to issuance of any permit, prepare a fact sheet or determination supporting his or her stated intent to issue such a permit and shall transmit to USEPA and any other interested party which so requests, a copy of the fact sheet or determination and a draft copy of the permit which is proposed for issuance. Concurrently with the transmission of this information, the Director shall, through a Class I legal advertisement in a newspaper of general circulation in the area of the proposed new source or modification, or the area of the existing stationary source seeking an operating permit notify the public of the Director's intent to issue a permit and provide for a 30 day comment period by the public and USEPA. The legal advertisement shall summarize the Director's findings and provide notice of the availability for public review of the draft permit and fact sheet.~~

~~6.5. The Director shall review and appropriately address any comments received from the public and USEPA prior to permit issuance.~~

8.1. The Director shall maintain for public review a permit application list of proposed new stationary sources, source modifications, relocations, Class II administrative updates, temporary and general permit applications/registrations 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 Director will receive and evaluate written comments relating to the permit application.

8.3. Notice Level A.

At the time that an application for a Class II administrative update or temporary permit for a stationary

source 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 Class II administrative update or temporary permit shall be issued to any applicant until at least fifteen (15) 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.

For relocations and general permit registrations, the applicant shall place a Class I legal advertisement in a newspaper of general circulation in the area where the source is or will be located. No relocation 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.

#### 8.5. Notice Level C.

For construction and modification applications, applications for sources subject to 45CSR15, 45CSR16, 45CSR27 and 45CSR34, and all other applications not otherwise subject to the provisions of subsections 8.3, 8.4 or 8.6, the Director shall place a Class I legal advertisement of the agency's intent to approve 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 are not subject to public notice. No construction or modification permit shall be issued to any applicant until at least forty-five (45) 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 Director's discretion, the applicant may be required to place a commercial display advertisement as set forth in subdivision 8.5.a.

8.5.a. 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.

#### 8.6. Notice Level D.

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 Director 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 forty-five (45) 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 8.5.a. and a sign as set forth in subdivision 8.6.a.

8.6.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 an air quality permit has been applied for and include the West Virginia Office of Air Quality Permitting section telephone

number for additional information.

8.7. At the Director's discretion, public notice requirements of subsections 8.3 through 8.5 may be moved to the next higher notice level.

8.8. At the time public notice has been made pursuant to subsections 8.3 through 8.6, the Director or the applicant shall transmit to the county courthouse in the county where the source is or will be located a copy of the information contained in the Class I legal advertisement.

8.9. The Director shall, prior to issuance of any permit, 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 with the transmission of this information, the Director shall notify the public through a Class I legal advertisement in accordance with the provisions of subsections 8.5 or 8.6.

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

8.11. The initial public notice of any proposed new or revised general permit must be conducted by the agency in accordance with the provisions of subsection 8.5. The Director shall, prior to issuance of any general permit, prepare a rationale document supporting his or her stated intent to issue such a 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. The Director shall review and appropriately address any comments received from the public and U. S. EPA prior to the issuance of any general permit.

#### **§45-13-79. Public Meetings.**

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

79.2. The Director, 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.

79.3. At a reasonable time prior to such meeting, the Director 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.

#### **§45-13-810. Permit Transfer, Suspension, Revocation and Responsibility.**

810.1. A permit 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 Director determines that the proposed permittee has all necessary permit responsibility and the current permittee notifies the Director in writing at least 30 days in advance of the proposed transfer date. The proposed new permittee must certify to the Director, 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 Director 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 Director is not received by the existing permittee and proposed new permittee within thirty (30) days after the Director's receipt of their respective notices, then the transfer is effective on the date specified in the written agreement between the permittees.

810.2. The Director may suspend or revoke a permit if, after (6) months from the date of issuance, the holder of the permit cannot provide the Director, at the Director'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 Director's request. If construction or modification of a stationary source is discontinued for a period of eighteen (18) months or longer, the Director may suspend or revoke the permit.

810.3. The Director may suspend or revoke a permit 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 Director's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the Director in accordance with the provisions of W. Va. Code § 22-5-5 to show cause why the permit should not be suspended, modified or revoked.

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

#### **§45-13-911. Temporary Construction or Modification Permits.**

911.1. Upon written request by an owner or operator of a source, the Director may allow the owner or operator to make limited changes for experimental-and-, 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 Director shall respond in writing and 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.

911.2. To permit experimental, ~~product or process changes~~ testing, commercial development and other temporary purposes, the Director 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 Director's discretion) upon the submission of a written application for such extension to the Director by the owner or operator. The Director 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.

911.2.a. The Director 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 nature of the request. At the same time that an application for a temporary permit is filed with the Director, the applicant shall also place a Class I legal advertisement in a newspaper in general circulation where the source is or will be located. The advertisement shall contain the name of the applicant, the type and location of the source and the nature of the permit sought and provide notice to the public that

written comments may be submitted to the Director regarding the application. No temporary permit may be issued by the Director until a fifteen (15) day comment period is provided. During this time, the Director will receive and evaluate written comments relating to the application. The Director shall act to approve or deny the permit request within sixty (60) days of the publication of the required legal advertisement.

911.2.b. The Director may suspend or revoke any temporary permit upon 24-hour notice to the permittee if the Director 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 Director 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 Director 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.

#### **§45-13-1012. Permit Application Fees.**

12.1. Applications for permits required under sections ~~4-5~~ and ~~9-11~~ of this rule shall be subject to the fee provisions of section 3 of 45CSR22. Applications for permits under section 4 shall be subject to the fee provisions of section 4.

#### **§45-13-1113. Relationship of this Rule to Other Inconsistency Between Rules.**

~~11.1.~~ When a provision of this rule conflicts with the provisions of any other rule adopted by the Director, the Director shall require that the applicant or permittee comply with the more stringent or rigorous provision.

~~11.2.~~ Upon approval and incorporation of this rule by U. S. EPA into the West Virginia Implementation Plan under Title I of the federal Clean Air Act, any stationary source for which a permit has been issued pursuant to rules of the Director implementing Title V of the federal Clean Air Act shall be exempt from the requirement to obtain permits for construction and modification under this rule.

~~11.3.~~ The issuance of a valid operating permit issued in accordance with rules promulgated by the Director pursuant to Title V of the Clean Air Act shall operate to revoke an existing stationary source operating permit issued under this rule.

13.1. In the event of any inconsistency between this rule and any other rule of the Director, such inconsistency shall be resolved by the determination of the Director 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 Director that a source should be made subject to the permitting requirement of this rule to prevent a statutory air pollution, the Director shall require the owner or operator of such a source to apply for and obtain a permit pursuant to the provisions of this rule. The Director may require such action with respect to 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 Director's finding is based. In issuing any permit condition required by this subsection, the Director 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, or files a notification as required by subsection 5.13, shall provide the Director with the nature and extent of any emissions of hazardous air pollutants. Hazardous air pollutants (that are not toxic air pollutants) shall be subject to limitations or controls only to the extent necessary: to incorporate an applicable requirement based upon any rule of the Director promulgated pursuant to W.Va. Code §§ 22-5-1 et seq.; to implement subsection 5.5 related to voluntary permitting; to establish case-by-case maximum achievable control technology (MACT) requirements as required by 45CSR34; or to set an emission limit based upon the source's maximum potential to emit as provided in the permit application. 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.

**TABLE 45-13A**  
**STATIONARY SOURCES OF AIR**  
**POLLUTANTS**

- ~~— Fossil-Fuel-Fired Steam Electric Plants Greater Than 250 Million Btu/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~~
- ~~— Primary Copper Smelters~~
- ~~— Municipal Incinerators Capable of Charging Greater Than 250 Tons of Refuse/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~~
- ~~— Fossil Fuel Boilers (or combinations thereof) Totaling More Than 250 Million Btu/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~~
- ~~— Charcoal Production Plants~~

TABLE 45-13B13A

<u>Hazardous/Toxic Pollutant</u>	<u>Potential Emission Rate pounds/year</u>
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****Tier I**

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<sub>2</sub> 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.

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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 rendering 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. Maintenance equipment used for surface coating, painting, dipping or spraying operations, excluding those that will emit VOCs or hazardous air pollutants.
28. Fire suppression systems.
29. Firefighting equipment and the equipment used to train firefighters and emergency response individuals, which is subject to 45CSR6 and complies with 45CSR15.
30. Single-use flares used solely to indicate danger to the public.
31. Hand-held applicator equipment for hot melt adhesives with no VOC or hazardous air pollutant in the adhesive formulation.
32. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.
33. Humidity chambers.
34. Hydraulic and hydrostatic testing equipment.
35. Mobile internal combustion engines used for landscaping purposes.
36. Laser trimmers using dust collection to prevent fugitive emissions.
37. Laundry activities, excluding dry-cleaning and steam boilers.
38. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.
39. Oxygen scavenging (de-aeration) of water.
40. Activities which occur strictly for maintenance of grounds or buildings, including: lawn care, weed

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control, pest control, grinding, cutting, welding, woodworking, general repairs, janitorial activities, steam cleaning and water washing activities, as long as there are no hazardous air pollutants emitted.

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. Repair or maintenance activities for a specific site not related to the source's primary business activity, excluding emissions from surface coating or degreasing (solvent metal cleaning) activities.
44. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.
45. Shock chambers.
46. Solar simulators.
47. Steam cleaning operations, excluding hazardous air pollutant emissions.
48. Steam leaks.
49. 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.
50. 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.
51. Storage tanks, vessels and containers holding or storing liquid substances that will not emit any regulated air pollutant.
52. Vents from continuous emissions monitors and other analyzers.
53. Operation of groundwater remediation wells, including emissions from the pumps and collection activities. This does not include emissions from air-stripping treatment or storage.
54. Log wetting areas that are using only water.
55. Log flumes.
56. The storage, handling and handling equipment for bark and wood dust not subject to 45CSR7.
57. Solid waste dumpsters.
58. Ozone generators used in water treatment facilities.
59. 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.

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

TABLE 45-13CTier II

1. One (1) blacksmith forge. Any person utilizing this category must keep records of the number of times this exemption is utilized and be prepared to provide that data to the Director at his or her request.
2. One or more combustion units at commercial, institutional or industrial facilities, including space heaters operated by direct heat transfer, which in the aggregate, do not exceed 10 million BTU, designed and used exclusively for comfort heating and maintenance and which use as a fuel liquid petroleum gas, natural gas, #2 fuel oil or kerosene. Any person utilizing this exemption must keep records on the combustion units that are subject to this category and on the annual amount of fuel consumed by such a source and be prepared to provide that data to the Director at his or her request.
3. Fugitive particulate emissions related to movement of personal passenger vehicles.
4. Noncommercial water-washing operations by a site of empty drums from that site (those drums of less than or equal to 55 gallons that contain less than 3% of the maximum container volume of drummed material) with emissions less than 2 tons per year of hazardous air pollutants or VOCs in the aggregate.
5. Emission units which are not subject to any other rule of the Director promulgated pursuant to W.Va. Code §§ 22-5-1 et seq. and which emit pollutants (carbon monoxide, nitrogen oxides, sulfur dioxide, VOC and particulate matter) into the atmosphere at a rate of less than 1 pound per hour and less than 1 ton per year aggregate total for each pollutant.
6. Emission units which are not subject to any other rule of the Director promulgated pursuant to W.Va. Code §§ 22-5-1 et seq. and which emit toxic air pollutants or hazardous air pollutants into the atmosphere at a rate of less than 0.1 pounds per hour and less than 500 pounds per year aggregate total for each toxic or hazardous air pollutant from all emission sources.