# WEST VIRGINIA

# SECRETARY OF STATE

KEN HECHLER

# ADMINISTRATIVE LAW DIVISION

FORM #3

Do Not Mark In This Box

FILED

DEC 17 3 00 PM '93

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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

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

CITE AUTHORITY: W. Va. Code §§22-5-1 et seq.

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 NEW 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.

Carrie J. Chambers
Authorized Signature

$8.80 w/out Comments
$33.60 w/comments

Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526

# West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

December 22, 1999

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: Additional Filing Information for 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"

Dear Ms. Cooper:

Please insert the following documents to the above-referenced rule that was filed with your office and the Legislative Rule-Making Review Committee on Friday, December 17, 1999:

- The original approval-for-filing letter signed by Commissioner Castle; and
- The minutes of the September 19, 1999 meeting of the Division of Environmental Protection Advisory Council

Your cooperation in the above request is very much appreciated, and we apologize for any inconvenience this may have caused you. If you should have any questions or require additional information, please let me know.

Sincerely,

Carrie J. Chambers

Carrie J. Chambers
Executive Assistant

cc: Legislative Rule-Making
Review Committee (15 copies of Minutes attached)
Karen Watson

Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526

# West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

December 17, 1999

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 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"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your office as an agency-approved legislative rule.

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C Castle

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

## *APPROVED MINUTES*

# ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

## September 9, 1999, Director's Conference Room, Nitro

The seventeenth meeting of the DEP Advisory Council was held Thursday, September 9, 1999, in the Director's Conference Room located in Nitro, Chairman Michael Castle called the meeting to order at 2:00 p.m.

Attending:

**Advisory Council Members:**

Michael Castle, Chairman
Jacqueline Hallinan
William Raney
William Samples

**Environmental Protection:**

Tony Grbac
Randy Huffman
Skipp Kropp
Pam Nixon
Terry Polan
Cap Smith
Barbara Taylor
Karen Watson

1) Chairman Castle introduced himself and made opening remarks.

2) Review and Approval of June 10, 1999 Minutes. Chairman Castle called the meeting to order at 2:00 p.m. The first order of business was approval of the minutes of the June 10, 1999, Advisory Council meeting: they were approved as written.

3) Update on Status of Blasting Rule by Randy Huffman. Deputy Director Huffman reiterated that the Blasting Rule was developed as a result of Senate Bill 681. The Blasting Rule was originally filed in June; however due to complaints by citizens/industry regarding their lack of involvement in the development of the rule, a stakeholders group was formed. This group met weekly to review the rule and to make any agreed upon changes by the end of July. The results of the meetings are available on the DEP website - Blasting Stakeholders. A number of consensus recommendations to the rule were developed into a 2-page summary. The revised rule was filed in August.

4) Discussion of Proposed Rules by Karen Watson

45CSR8 - AMBIENT AIR QUALITY STANDARDS FOR SULFUR OXIDES AND PARTICULATE MATTER. The purpose of this rule is to establish ambient air quality standards for sulfur oxidizes and particulate matter, equivalent to those national primary and secondary ambient air quality standards established by the U. S. EPA. The rule being proposed by the Director suspends the PM 2.5 standard until further direction from either the U.S. EPA or the U.S. Supreme Court of Appeals. The proposed rule retains the standard for PM10 since sold basis for the Court vacating the PM10 standard was that the PM2.5 and the PM10 standards could not co-exist without there being essentially double regulation.

45CSR9 - RULES PERTAINING TO AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE ANDF OZONE. The purpose of this rule is to establish ambient air quality standards for carbon monoxide and ozone, equivalent to those national primary and secondary ambient air quality standards established by the U. S. EPA. To be consistent with this ruling, the rule being proposed by the Director suspends the ozone standard until further direction from either U.S. EPA or the Supreme Court of Appeals.

45CSR24 - TO PREVENT AND CONTROL EMISSIONS FROM HOSPITAL/MEDICAL/INFECTIOUS WASTE INCINERATORS. This rule establishes emission limits and performance standards for new and existing hospital/medical/infectious waste incinerators (HMIWI). The pollutants regulated by this rule include metals (cadmium, lead, and mercury); particular matter; acid gases (sulfur dioxide and nitrogen oxides, and hydrogen chloride); organic compounds (dioxins and furans); carbon monoxide; and opacity. This rule also established requirements for HMIWI operator training/qualification, waste management plans, and testing/monitoring or pollutants and operating parameters. The purpose of revising the rule is to correct typographic errors and to maintain consistency with the federal rule.

5) Discussion of Proposed Rule by Terry Polan.

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 - 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 with 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.

6) Discussion by Cap Smith regarding Tire Piles. Cap Smith, Chief of the Office of Waste Management, discussed the problems and solutions currently being utilized regarding existing tire piles and the handling of the 2 million tires being produced each year. The EPA wants to be involved in the solution; however, they have no funding sources available to dedicate to the problem. Legislation will again be proposed. Mr. Smith also commented on the serious ongoing tire fire in Toledo, Ohio and distributed an article regarding this hazard (copy attached).

7) Discussion and Update by Barbara Taylor regarding TMDL Stakeholders. Barbara Taylor, Chief, Office of Water Resources, provided a detailed update on the status of the efforts of the TMDL Stakeholders group and provided explanatory handouts/graphics (copies attached). The TMDL Stakeholders group is focusing on going forward and making improvements.

8) Status update by Skipp Kropp on Regional Haze order.
Skipp Kropp reported that EPA has promulgated a Regional Haze rule. The rule assumes that the EPA NOx SIP Call for ozone transport and the new 8-hour ozone standard are in place. Inasmuch as the new ozone standard has been remanded to EPA in an appeal in which WV DEP participated, and the NOx SIP Call is being litigated, so far successfully, by WV DEP and other parties, Mr. Kropp advised that OAQ had also joined Michigan and several other parties in appealing the haze rule as well.

Chairman Castle thanked everyone for attending. The meeting was adjourned at 4:30 p.m.

Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526

# West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

December 17, 1999

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 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"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your office as an agency-approved legislative rule.

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my office at 759-0515.

Sincerely,

Michael C Castle

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

# Questionnaire

DATE: December 17, 1999

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022

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 §§22-5-1 et seq.

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

September 8, 1999

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

I. Class I legal advertisement, Charleston Daily Mail and Charleston Gazette
II. Sent a copy of the Public Notice to our agency mailing list
III. DEP's "Public Notice Bulletin" and DEP's "In Depth" (September issues)
IV. Public Notice placed on agency's website

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

October 12, 1999

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)

December 17, 1999

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

Edward L. Kropp, Chief
1558 Washington Street, East
Charleston, WV 25311-2599
Phone: 304-558-4022
Fax: 304-558-3287
E-Mail: skropp@mail.dep.state.wv.us

g. **IF DIFFERENT 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

# 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 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 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:

At a meeting September 9, 1999, the Advisory Council reviewed and discussed this rule; there were no substantive changes as a result of the Council's meeting (See attached minutes of that meeting.)

**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: December 17, 1999

Signature of Agency Head or Authorized Representative

Carrie J. Chamb

# TITLE 45
# LEGISLATIVE RULE
# DIVISION OF ENVIRONMENTAL PROTECTION
# OFFICE 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, 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 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 Director 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 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 and production levels 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.~~6~~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.

~~2.7. [Reserved]~~

2.~~8~~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 minimus source" means any equipment or activity listed in Table 45-13B, 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 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 equipment or activities listed in Table 45-13B do not need to be added together by the source unless otherwise required by the Director.

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 applicability under this rule. 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 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. Activities listed in Table 45-13B do not require any monitoring, recordkeeping or reporting unless specifically requested by the Director.

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 Director 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.

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.~~9~~8. "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.~~11~~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.~~12~~10. "Enforceable" means enforceable by the Director and U. S. EPA unless specifically designated to mean otherwise in this rule.

2.~~13~~11. "EPA" or "U. S. EPA" means the United States Environmental Protection Agency.

2.~~14~~12. "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.

2.~~15~~13. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

2.~~16~~14. "Hazardous air pollutant" means any substance listed ~~on Table 45-13B~~ pursuant to section 112(b) of the Clean Air Act.

2.~~17~~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.~~17~~16. "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~~ ~~$NO_x$;~~

~~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~~ ~~$NO_x$;~~

~~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~~ ~~$NO_x$;~~

~~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~~ ~~$PM_{10}$~~ ~~nonattainment areas, sources which emit or have the potential to emit seventy (70) tons per year or more of~~ ~~$PM_{10}$~~ ~~or~~ ~~$PM_{10}$~~ ~~precursors.~~

2.~~18~~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.~~18~~17.a. Results in an emissions increase of ~~two~~ six (~~2~~6) pounds per hour or more or ~~five (5)~~ ten (10) tons per year or more of any regulated air pollutant ~~other than a hazardous or toxic 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.~~18~~17.~~b~~c. Results in any increase in emissions of ~~a hazardous or toxic~~ an 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~~ physical change or change in method of operation, 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;

2.~~18~~17.~~e~~d. 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.~~18~~17.~~d~~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.~~18~~17.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 or throughput 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 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.

2.1~~9~~8. "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.~~20~~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 Director 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 after 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 Director 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 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.

2.~~21~~20. "Regulated air pollutant" for the purpose of this rule means the following:

2.~~21~~20.a. Nitrogen oxides ($NO_x$), ~~any~~ volatile organic compounds (VOC), or particulate matter;

2.~~21~~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.~~21~~20.c. Any ~~hazardous or toxic~~ air pollutant listed on table 45-13~~B~~A; ~~or~~

2.~~21~~20.d. Any ~~other~~ air pollutant subject to an emission standard promulgated by the Director 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).

2.2~~2~~1. "Relocation" means the physical movement of a stationary source outside the existing plant boundaries.

2.2~~3~~2. "Responsible official" means one of the following:

2.2~~3~~2.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;

2.2~~3~~2.b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

2.2~~3~~2.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

2.2~~3~~2.d. The designated representative delegated with such authority and approved in advance by the Director.

2.2~~4~~3. "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.

2.2~~5~~4. "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:

2.2~~5~~4.a. Is subject to any substantive requirement of an emission control rule promulgated by the Director; ~~or~~

2.2.~~5~~4.b. Discharges or has the potential to discharge more than six (6) pounds per hour or ten (10) 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.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;

2.2~~5~~4.~~c~~d. Discharges or ~~may~~ has the potential to discharge any ~~hazardous or toxic~~ air pollutant(s) listed in Table ~~45-13B~~45-13A in the amounts shown in Table ~~45-13B~~45-13A or greater; or

2.2~~5~~4.~~d~~e. An owner or operator voluntarily chooses to be subjecte~~d~~ 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. "Toxic air pollutant" means any of the following substances which are included on Table ~~45-13B~~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 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), CFC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentaflouroethane), 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.

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 shall take final action on any Class I request and may take final action on any Class II request by:

4.1.b.1. Issuing the administrative update;

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 with the permittee's consent, 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 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 Director determines will 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 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 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 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 change allowed in the preceding sentence, and until the Director 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.

## §45-13-45. 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 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 ordering and procuring 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.

~~4~~5.~~2~~4. 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.

~~4~~5.~~3~~5. 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 ~~S~~section ~~6~~8.

~~4~~5.~~4~~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, 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-~~1~~5-1~~,~~ et seq.

45.~~5~~7. 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-~~1~~5-1~~,~~ 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.~~6~~8. The Director shall complete a review of any application for an existing stationary source operating permit within ~~twelve (12) months~~ 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 Director or if the Director determines that acceptable compliance determination provisions cannot be incorporated to satisfy permit terms requested by the permit applicant.

45.~~7~~9. 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~~ section for application review by the Director shall not be deemed to have begun until such time as the permit application is deemed complete.

45.~~8~~10. 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.~~9~~11. The Director 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 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 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. 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.

45.~~10~~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.~~11~~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 Table 45-13B, ~~shall~~ may 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.

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 pollutant, in an amount below the levels which require a permit to modify, excluding the activities 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 Director upon request.

~~4~~5.~~12~~15. 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 permitee and U.S. EPA are provided with a sixty (60) day written notice of such a permit cancellation.

## §45-13-~~5~~6. Determination of Compliance of Stationary Sources.

~~5~~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 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.

~~5~~6.2. 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 permit conditions, W.Va. Code §§ 22-5-1 et seq., or any rules promulgated pursuant to W.Va. Code §§ 22-5-1 et seq., the source shall immediately take steps approvable by the Director which shall assure compliance, which 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 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. 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 Director.

## §45-13-~~6~~8. 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 sourceor 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, operating permits, 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, relocation permit, temporary permit or 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 Class II administrative update, temporary permit, 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.

8.4. Notice Level B.

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

or 8.5, 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, modification or operating 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 8.4.a.

8.4.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.

8.5. Notice Level C.

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 8.4.a. and a sign as set forth in subdivision 8.5.a.

8.5.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.

8.6. At the Director's discretion, public notice requirements of subsections 8.3 and 8.4 may be moved to the next higher notice level.

8.7. At the time public notice has been made pursuant to subsections 8.3 through 8.5, the Director or the applicant, as applicable, 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.

8.8. The Director 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 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 8.4 or 8.5.

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

8.10. Public notice of any proposed new or revised general permit must be conducted by the agency in accordance with the provisions of subsection 8.4. The Director 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 Director 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-~~7~~9. Public Meetings.**

~~7~~9.1. 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.

~~7~~9.2. 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.

~~7~~9.3. 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-~~8~~10. Permit Transfer, Suspension, Revocation and Responsibility.**

~~8~~10.1. 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.

~~8~~10.2. 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.

~~8~~10.3. 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.

~~8~~10.4. 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.

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 Director, with reasonable specificity, information to the contrary. All permits 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-~~9~~11. Temporary Construction or Modification Permits.

~~9~~11.1. 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.

~~9~~11.2. 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.

~~9~~11.2.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~~ proposed start-up date for the stationary source. 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~~ of 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~~ information required under subsection 8.3. No temporary permit may be issued by the Director until a ~~fifteen (15)~~ thirty (30) 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.

~~9~~11.2.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-~~10~~12. 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-~~11~~13. ~~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 shall include in the application information on 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:

15.1.a. to incorporate an applicable requirement based upon any rule of the Director 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.

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.

~~**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-~~13B~~13A

| ~~Hazardous/Toxic~~ 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 MINIMUS 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. 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 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).

# JACKSON & KELLY PLLC

ATTORNEYS AT LAW

1600 LAIDLEY TOWER
P O BOX 553
CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

http://www.jacksonkelly.com
(304) 340-1017

300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

412 MARKET STREET
PARKERSBURG, WEST VIRGINIA 26101
TELEPHONE 304-424-3490

1000 TECHNOLOGY DRIVE
FAIRMONT, WEST VIRGINIA 26554
TELEPHONE 304-368-2000

1144 MARKET STREET
WHEELING, WEST VIRGINIA 26003
TELEPHONE 304-233-4000

1660 LINCOLN STREET
DENVER, COLORADO 80264
TELEPHONE 303-390-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40595
TELEPHONE 606-255-9500

2401 PENNSYLVANIA AVENUE N W
WASHINGTON, D C 20037
TELEPHONE 202-973-0200

*MEMBER OF LEX MUNDI,
THE WORLD'S LEADING ASSOCIATION
OF INDEPENDENT LAW FIRMS*


October 12, 1999

Edward L. Kropp, Esquire
Chief
Office of Air Quality
West Virginia Division of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311

Re: 45 CSR 13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits and Procedures for Evaluation"

Dear Chief Kropp:

For more than a year, the West Virginia Division of Environmental Protection, Office of Air Quality ["OAQ"] has been involved in an extensive stakeholder process to review and update all of its administrative regulations. The West Virginia Chamber of Commerce ["Chamber"] not only was an early proponent of initiating the stakeholder process, but also has been an active participant in the review processes related to each of OAQ's regulations.

Principal among the regulations being reviewed by OAQ is 45 CSR 13 ["Regulation 13"] relating to the permitting of minor sources. This regulation is a matter of utmost importance to the Chamber, not only because it is a regulation without federal counterpart, but also because as it is implemented and applied in West Virginia, it results in significant, and we believe, unnecessary, delays in permitting.

The complications that result from the implementation of Regulation 13, are principally related to the four to six <u>months</u> time period typically taken by DEP to issue minor source permits in comparison with the four to six <u>weeks</u> time period that is typically taken by other states to accomplish the same task. Often, differences of this kind become the sole determinative factor for new or expanded production facilities being located in other states. To remain competitive, our businesses must respond to the market. With air pollution permitting requirements applicable to even the most minor of sources, it is critically important that a way be found to issue permits expeditiously.

As we have discussed with you and your staff on many occasions, there are at least four significant steps that need to be undertaken to accomplish the objective of timely permit issuance. The common element behind each of these initiatives is the assurance of the same level of environmental protection that has been enjoyed under the current program.

Accordingly, the Chamber urges that OAQ undertake the following actions:

1. Benchmarking Other State Programs - It has been our experience that many of our neighboring states are able to issue permits comparable to those required by Regulation 13 in a fraction of the time period which OAQ undertakes to issue those permits We believe that a careful survey of the regulatory programs of other states is essential to understanding the level of performance that is appropriate for the West Virginia program.

2. Funding and Staffing - Obviously, for permits to be issued in a timely fashion, OAQ must have not only enough permit writers to process needed permit applications, but also to have permit writers with sufficient skill and experience to do so timely and effectively. The Chamber is strongly in support of OAQ being provided with an appropriate level of funding authorization to hire the permit engineers necessary to accomplish the task of timely and effective permit issuance. It is our understanding that OAQ already has funds available to it through the collection of user fees that are already assessed against members of the Chamber and others that would be more than sufficient to fund all of the staffing needs of an appropriate minor source permitting program. We look forward to working with OAQ in approaching the Legislature to assure that the Agency is authorized to expend these funds on necessary staff improvements and where appropriate, to increase the pay scale of permit engineers to assure that appropriate talent can be retained with the program.

3. More Flexible Permit Issuance - The Chamber believes that many of the difficulties which the regulated community experiences with Regulation 13 relate in great part to efforts on the part of the Agency to draft permits not so much to protect the environment, but rather to lock in permittees to a precise facility description that exists on the date the permit application was filed. The effect of this approach to permitting is to lock in the facility development so tightly that Regulation 13 permitting is on the critical path for every project development scheduled. We urge that OAQ work with permittees to write permits that are protective of the environment but are sufficiently flexible to allow maximum latitude with respect to changes in facility equipment and design and operating parameters, while assuring a full measure of environmental protection.

4. Regulatory Revisions - Beyond the implementation questions that we have already identified, we recognize, and we believe OAQ recognizes, the need for revisions to Regulation 13 itself. The Chamber welcomes the proposed revisions to this rule that have been advanced by OAQ. As will be discussed below, we believe many of these changes are positive and favorable Other changes are problematic and suggestions for adjusting those proposals as well as to accomplish other proposals will be made in these comments.

Collectively, it is our hope that by adjusting Regulation 13 in this manner, it will be possible to eliminate the significant impediment to economic development that is currently created by Regulation 13.

Accordingly, the Chamber offers the following specific comments related to the proposed revisions to Regulation 13 that will be the subject of the public hearing to be held on October 12, 1999.

## A. Major Areas of Concern

### 1. Permit Determination Notification

The most notable example of the extremely burdensome nature of Regulation 13 that adds little or no value to the process is the requirement of Section 5.13 of the proposed rule which provides that even though an operator is not changing its operation in a way that would trigger a permitting requirement, there is a mandatory obligation to notify the Director of that change.

We know of no other situation in which a regulation defines when a permit is required, but also requires that even though a permit is not required, notification must be made to a regulatory agency to confirm that determination. The effect of this requirement is to necessitate the needless expenditure of significant amounts of resources on the part of both the Agency and the regulated community in what has become virtually a full-blown permitting process simply to show that no permit is needed.

Sound public policy dictates that the Agency specify clearly and precisely when an operator is obligated to obtain a permit and place the responsibility on the operator to make application if and when those permitting requirements are triggered. There should be no obligation placed on an operator to make a filing with the Agency to prove that no permit is required. This is of particular concern when such a filing is required to be so extensive as to amount to a permit application.

We urge that the mechanism set forth in proposed Section 5.13 be deleted or utilized instead as an optional regulatory rule available to the permittee to address the situation where the regulatory requirements are not sufficiently clear to allow the permittee to determine with sufficient certainty whether a permitting requirement is triggered In addition, such an optional mechanism should be available to the permittee who might want to seek voluntary restrictions or limitations on the manner in which a change might take place, so as to be certain not to trigger any permitting obligations.

Otherwise, there is no basis for retaining this provision in Regulation 13 and it should be deleted. We have set forth below a proposed revision to Section 5.13 that would convert it to an optional regulatory mechanism and allow the provision to be used to seek voluntary restrictions on operations.

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 pollutant, in an amount below the levels which require a permit to modify, excluding the exemptions in Tables 45-13B and 45-13C, may 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 taking into account any described limitations on expected use of the unit 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. If a permit is not required, the representations, calculations and assumptions in the written notification shall be binding upon and be enforceable against any owner or operator of a source proposing the use of operational restrictions to remain below permitting thresholds. In any other situation in which a permit is not required, the Director shall make that determination without conditions.

In addition, we propose that a conforming change be made to the definition of potential to emit set forth in Section 2.19 by revising the second sentence of that section to read as follows:

> 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 or in any binding and enforceable notification filed pursuant to Section 5 13 of this regulation.

## 2. Hazardous Air Pollutants

Throughout the stakeholder process related to Regulation 13, concern has been voiced by the regulated community over OAQ's authority to expand the scope of its regulation of hazardous air pollutants. At the heart of this concern is the statutory requirement that exists in OAQ's laws that preclude West Virginia from being more stringent than federal regulation without appropriate justification.

At this time, EPA is in the process of implementing the permitting of regulatory requirements contained in Clean Air Act Section 112 EPA is currently developing MACT requirements for hazardous air pollutants and is scheduled to complete requirements with respect to all other sources by November 15, 2000. Once adopted by EPA, OAQ will then be in a position to consider the adoption of the federal program as part of West Virginia's regulatory regime. OAQ periodically adopts into 45 CSR 34 these MACT standards as they are developed by EPA.

In the meantime, Regulation 27 provides OAQ with authority to address those high priority toxics and hazardous air pollutants that were identified in EPA's 1987 study of air toxics in the Kanawha Valley. It is the 14 HAPs that are the subject of Regulation 27 that also provide OAQ's limited basis for permitting activities related to air toxics under Regulation 13.

We urge, therefore, that Regulation 13 not be expanded beyond the current list of hazardous air pollutants set forth in Table 45-13A. If, however, there is to be a provision in Regulation 13 that is expanded over current regulatory requirements, that provision should be narrowly drawn so as to minimize the extent to which it may run afoul of the Agency's statutory prohibition against being more stringent than federal requirements. Section 15 of the proposed rule continues to be problematic for several specific reasons.

First, given the fact that OAQ has elected to set thresholds for hazardous air pollutants in the definitions of modification (§2,17.b) and stationary source (§2.24.b) and in authorizing a de minimus source (Table 45-13C, Item 6), it is no longer necessary to include the first sentence of Section 15. That sentence should be deleted in favor of allowing the remainder of Regulation 13 to set forth the requirements for making permit application or notification.

Second, we asked that the fourth sentence of Section 15 be revised to provide that any MACT requirement be incorporated into a Regulation 13 permit when appropriate

Finally, to recognize the special treatment Congress has given to certain sources pursuant to Section 112(n) of the Clean Air Act, we urge that Section 15 provide that its provisions not be made applicable to such sources unless and until a MACT is determined for those sources, and then only for hazardous air pollutants covered by that MACT.

The following are our proposed revisions to Section 15 reflecting each of these points:

15.1. ~~For purposes of establishing an inventory of hazardous air pollutants, any person which makes an application for a permit as required by Section 5.1 or 11.2 of this rule, or files a notification as required by Section 5-13 of this rule, shall provide the Director with information regarding the nature and extent of any emissions of hazardous air pollutants.~~ <u>Hazardous air pollutants shall be subject to limitations or controls under this rule only to the extent necessary to incorporate an applicable requirement based upon any rule of the Director promulgated pursuant to WVa. Code §§22-5-1 et seq. to implement Section 5.5 of this rule 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</u>

> <u>subsequently issued MACT requirement, facility may request a review of an existing permit received pursuant to this rule, when appropriate, the Director shall incorporate the MACT requirement into the permit. 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 (that are not listed in table 45-13A) 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.</u>

### 3. Administrative Updates Final Action

One of the most significant objections which the business community has with respect to Regulation 13 is the extensive time delays that are experienced in obtaining approvals for even the most minor permit changes. We have, therefore, been strong supporters of the addition of a provision to Regulation 13 to create a streamlined process for making minor updates to a valid existing permit.

We were pleased that during one of our stakeholder meetings during the month of April, OAQ itself offered a proposal with respect to administrative updates that contained a provision that made it mandatory for the Director to take final action on a request for administrative update within 60 days of receipt of an administrative update request. That OAQ sponsored language was incorporated into the May 10, 1999 version of a new Section 4 to be added to Regulation 13 to address administrative updates.

However, apparently on its own initiative and without the concurrence of the stakeholder group, OAQ subsequently changed this provision with language that now makes it discretionary as to whether the Director will act on a request for an administrative update within 60 days of its filing. Not only does this unilateral change undermine the stakeholder process, it does so without sound policy justification.

Given the extremely minor nature of the changes that are authorized to be covered by administrative updates, there is no good reason why action on such a request could not and should not be taken by the Director within 60 days of the date of receipt of the request. This is particularly the case when one recognizes that the changes that are eligible for administrative update consideration are so insignificant as to not qualify as a permit "modification" under the terms of Regulation 13 itself.

Moreover, the regulations of the United States Environmental Protection Agency ["EPA"] provide that in issuing administrative updates for federal permits, the "permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request." 40 C.F.R. §70.7(d)(3)(i) (emphasis added).

We therefore urge that the timeliness of authorizing a requested administrative update be addressed by changing Section 4.1.b. to provide that the Director shall take action on such request within 60 days of its receipt.

In the alternative, OAQ should revise the final rule to provide that final action on all Class I Administrative Update requests shall be taken within 60 days and that action on Class II Administrative Updates may be taken within 60 days. The following provision would accomplish this change:

> 4.1.b. "Within sixty (60) days from receipt of a complete application for an administrative update, the Director shall take final action on any Class I request and may take final action on any Class II request by:"

**4. Administrative Updates Immediate Implementation**

We note that EPA allows a source to implement administrative updates under the federal program immediately upon receipt of the submittal of such request. Specifically, EPA's regulations provide that 40 C.F.R §70.7(d)(3)(iii) that:

> "The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request."

On this issue there can be no sound public policy necessitating that West Virginia should handle administrative updates of its permits in a way that is more stringent than the manner in which EPA handles administrative updates of federal permits.

We propose the following language to allow Class I administrative updates to be implemented immediately upon their filing at the sole risk of the permittee.

> 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 change allowed in the preceding sentence, and until the Director takes any of the actions specified in subsection 4.1 b of this rule, 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.

**5. Permit Condition Authority**

In yet another action brought about by OAQ's unilateral proposal to modify Regulation 13 without the concurrence of the stakeholder group, a proposal has been advanced in Section 5.11 by OAQ to allow the imposition of an emission limit or limit on hours of operation or other constraints based on "other documented relevant information" This is a material and impermissible expansion of OAQ's authority to place conditions on permits. The current version of Regulation 13 would allow OAQ to place a limitation on a permit only based on information contained in the permit application or with the agreement of the permit applicant.

Authorizing OAQ to condition a permit based upon "other documented relevant information" is so vague as to defy a logical interpretation. Allowing OAQ to place conditions in a permit simply because he has seen a magazine article regarding technology that might have been used on a facility in another state or another country, or for whatever reason, is bad public policy that has no place in a regulation of this type.

Significantly, OAQ's authority to place conditions in a permit based on "other relevant information" is restricted by statute. West Virginia Code §22-5-4 makes it clear that "no rule of the Director shall specify particular manufacture of equipment nor a single specific type of construction nor a particular method of compliance except as required by the "Federal Clean Air Act" as amended".

Accordingly, the Chamber urges that OAQ not adopt the proposed change to this section and the words "and other documented relevant information" be deleted from the final version of the rule.

**6. Stationary Source Threshold**

We are particularly troubled by the changes that have been made in the definition of stationary source related volatile organic compounds, and regulated air pollutants. In particular, the proposed definition adds a requirement that emissions of volatile organic compounds or regulated air pollutants in excess of 5 tons per year would cause a source to qualify as a stationary source.

This constitutes a material expansion of the definition of stationary source that is certain to bring in many additional sources into the permit program. Obviously, many of these sources will be extremely small in size and again are certain to have a disproportionately large impact on small businesses. It is extremely unclear under these circumstances whether these requirements would have an additional complicating effect because of possible retroactive application.

The Chamber objects to the addition of this new threshold requirement. We urge that the words "or five (5) tons per year" be deleted from this definition.

### 7. De minimus Source Category for Criteria Pollutants

While the Chamber is supportive of the inclusion of a Tier II de minimus source category related to criteria pollutants (Table 45-13C, Item 5), the language describing that category and the definition of "de minimus source" itself creates much confusion and inconsistency about the proper meaning of the category.

At issue is the language which indicates that the threshold levels in the category are applicable to the "aggregate total for each pollutant." It takes little more than a review of the pollutants involved to recognize that this phrase should not and could not logically require an aggregation of different criteria pollutants (i.e. nitrogen oxides and sulfur dioxide). Such is, of course, the meaning which is given to this concept in the definition of "modification" (§2.17.a) and "stationary source" (§2.24.a). The provision should therefore be revised to make clear that the threshold applies to each criteria pollutant and not to any aggregation of criteria pollutants. This should be accomplished by deleting the words "aggregate total" for Table 45-13-13C, Item 5.

To the extent that the term "aggregate" is meant to apply to a series of actions involving the same pollutant and the desire to determine whether those actions are 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 we urge that the issue be addressed in the following revised definition of "de minimus source" (§2.6):

> 2.6. "De minimus source" means any equipment or activity, ~~individually or in the aggregate~~, listed in Table 45-13B or Table 45-13C <u>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</u>. 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~~ <u>added together</u> by the source unless otherwise required by the Director. ~~Aggregated~~ <u>The total</u> emissions from Tier II equipment or activities listed in Table 45-13C <u>that are part of a common plan</u> shall be quantified and monitored by the facility for purposes of determining whether a "modification" or "construction" has occurred at the facility <u>as the result of the total emissions</u>.
>
> 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~~ total 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 that are part of such a common plan 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~~ that are part of such a common plan shall be totaled by the source ~~in determining~~ to determine 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.

## 8. De minimus Source Category for HAPs and TAPs

The Chamber is also supportive of the inclusion of a de minimus source category of sources of toxic air pollutants (TAPs) and hazardous air pollutants (HAPs). We have two principal concerns, however, with respect to the proposal being advanced by OAQ (See Table 45-13C, Item 6).

First, we note that the stakeholders agreed that such a category would be included as a Tier I category. OAQ on its own initiative has proposed this category as Tier II.

Second, the de minimus source category is written in such a way as to create confusion and inconsistency about the proper meaning of the category. Unlike the previous discussion related to criteria pollutants, we believe that agreement has been reached among the stakeholders and by OAQ that all HAPs and TAPs should be aggregated to determine if threshold levels have been met. This would be consistent with the definition of "modification" (§2.17.b) and "stationary source" (§2.24.b).

Accordingly, the Chamber proposes that this category be moved back to Tier I and be revised to read as follows:

> 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~~ all toxic or hazardous air pollutant ~~from all emission sources~~ that are an integral part of such emission units.

In addition, the change to the definition of "de minimus source" discussed in the preceding section is needed to add clarity to other aspects of this category.

**9. De minimus Source Category for R & D Units**

Because of the very small amount of pollutants emitted and the high degree of flexibility that is needed for their operations, the Chamber urges that OAQ create a de minimus source category for small research and development operations.

The fact that R & D facilities by their very nature are gathering information on a process and its emissions, traditional concepts of "potential to emit" have limited meaning. Any determination of potential to emit necessarily requires information on equipment specifications, process flow information, reaction chemistry and other data that cannot be readily determined at the R & D level.

To address this situation, we propose that a new Tier II de minimus source category be created as follows:

> "Research and development laboratories, which are not engaged in the production of chemicals for commercial sale except in de minimus amounts and which are not subject to any other rule of the Director pursuant to W. Va. Code 22-5-1 et seq. so long as the particular physical change or change in method of operation which will result in increased emissions to the atmosphere are equal to or below the following amounts, based upon estimated actual operating hours and operating conditions associated with the change:
>
> a. carbon monoxide, nitrogen oxides, sulfur dioxide, VOC and particulate matter at a rate less than 1 ton per year for each pollutant.
>
> b. toxic air pollutants or hazardous air pollutants at a rate less than 500 pounds per year for each pollutant.

## B. Additional Areas of Concern

### 1. Permanent Shutdowns

OAQ on its own initiative, and without the concurrence of the stakeholder group has proposed to add an additional factor to the definition of stationary source that would provide that any source not operating a minimum number of hours over a 5 year time period would be considered permanently shut down. While the provision proposed by OAQ allows a source to demonstrate to the Director reasons why a permit may not be revoked, the provision does not address a source's ability to demonstrate to the Director why a source should not be considered to be permanently shutdown.

We believe this issue of concern can best be addressed by relocating this provision into Section 5 of the rules, dealing with permitting requirements and by changing its provisions so that a source can make a demonstration to the Director as to the reasons why a source should not be considered permanently shut down. Language that would accomplish this change is set forth below:

> 10.4. A source which has not operated at least 500 hours in one, 12-month period within the previous five (5)-year time period ~~will~~ <u>may</u> be considered permanently shutdown, ~~U~~<u>u</u>nless such source can provide to the Director, with~~in~~ reasonable specificity, information to the contrary~~;~~. ~~a~~<u>A</u>ll permits may be <u>modified</u> revoked and/or reapplication or application for new permits may be required <u>for any source determined to be permanently shutdown</u>.

### 2. 6 pph Threshold Waiver

The definition of modification contains an agreed upon change to the threshold for regulated air pollutants providing that only increases in excess of 6 pounds per hour or 5 tons per year would qualify as a modification.

The regulated community recognizes that there are a significant number of extremely minor changes that can occur at a source that could exceed the 6 pound per hour limitation without coming close to the 5 ton per year trigger. This occurs particularly when storage tanks are filled only once or twice per year where emissions might be in excess of 6 pounds per hour, but only for a limited time period.

We urge that a mechanism be created to allow it to make a demonstration to the sole satisfaction of the Director that increases which exceed 6 pounds per hour but which are less than 5 tons per year are not significant and in which case those changes would not be subject to the permitting process related to modification.

Set forth below is proposed language that would accomplish this change:

2.17.b. Results in an emissions increase of ~~two~~ six (~~2~~6) 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 unless the permittee demonstrates to the sole satisfaction of the Director that such an increase is less than five (5) tons per year and that the nature and amount of such an increase is insignificant.

**3. Regulated Air Pollutant Criteria**

The definition of regulated air pollutant contains new subsections that add specific new pollutants to the definition of what constitutes a regulated air pollutant. These new sections 2.21.c, 2.21.e and 2.21.f each identify a new universe of air pollutants that would trigger these regulatory requirements.

Section 2.21.f is especially objectionable because it includes hazardous air pollutants listed under Section 112 of the Clean Air Act, as was previously discussed. The Agency's authority to regulate hazardous air pollutants is significantly constrained by its own statute.

Other provisions are objectionable because of the material expansion of the pollutants involved beyond the terms of the existing version of Regulation 13. These changes are being undertaken without the concurrence of the stakeholder group. These issues are complicated by OAQ's proposal that will be discussed in the following section that pollutants regulated for one source category are applicable to all source categories.

Set forth below are changes that we urge be made to restore this definition to its original form.

2.20.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;~~

~~2.20.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 promulgated under section 112 or other requirements established under section 112 of the Clean Air Act, specifically excluding air pollutants listed only in 112 (r).~~

### 4. Permit Application Incorporation

There is concern that to the extent that a Director seeks to establish as a permit condition, a matter that is contained within a permit application, the Director should be called upon to specifically identify what part of the permit application would constitute a condition in the permit. Permit applications are frequently voluminous and complex and contain much information of a general nature which has little or no relevance to air pollution permitting issues. For the Director to simply incorporate into the permit all of the conditions of a permit would be to bring into the permit much information that is not relevant to air pollution regulation.

By placing the specific identity of those items in the permit application that were relied upon by the Office of Air Quality in the issuance of its permit, both the permittee and the Agency's inspectors will have a clear picture of what it is that is being relied upon and what it is therefore that will be enforceable against the permittee.

Set forth below is language that would accomplish this change:

> 5.11. The Director may impose any reasonable condition as part of a granted construction, modification, existing stationary source operating permit Class II administrative update 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. <u>Any portions of the permit application (including plans and specifications) that are to be made permit conditions must be specifically identified in the permit itself.</u>

In the alternative OAQ should consider adding a new sentence to the end of Section 5 11 that reads as follows:

> "The permit may only incorporate by reference those portions of the permit application that directly relates tot he nature and quantity of emissions discharged to the atmosphere, unless the Director specifically identifies in the permit the other portions of the application to be incorporated."

**5. Subchapter II Sources**

It is apparent that Regulation 13 has no place in the regulation of such sources as nonroad engines, nonroad vehicles, motor vehicles and other emission sources regulated under Subchapter II of the federal Clean Air Act. We urge that a provision be added to the scope of this regulation that would make this point clear. Language that would accomplish this change is set forth below:

> 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, ~~-~~temporary permit or a general permit, and for filing notifications of changes not otherwise subject to the permit requirements of this rule. <u>This rule does not apply to non-road engines, non-road vehicles, motor vehicles, or other emission sources regulated under Subchapter II of the federal Clean Air Act; provided, however that the Director may regulate such sources pursuant to another rule promulgated for that purpose</u>.

**6. Storage of Equipment on Site**

While the Chamber strongly supports the provisions of §5.1 and §5.2 of the proposed rule, OAQ should clarify that these proposals authorize the temporary storage of materials on site in advance of permit issuance

From the discussions which occurred during the stakeholder process, we understand that agreement was reached that material storage was intended to be authorized by the proposed provisions of §§5.1 and 5.2.

Authorizing the temporary storage of material on site is, of course, consistent with EPA's December 13, 1995 guidance memorandum, which, in the context of the PSD program provides that "[a]llowed preconstruction activities would also include ordering materials and temporary storage on site."

We therefore urge that OAQ make it clear that the changes made to this rule are intended to authorize the temporary storage of material on site in advance of permit issuance.

### 7. Incorrect Cross Reference

OAQ should change the cross reference in §10 4 to read "W. Va. Code §§22-5-1 et seq."

## C. Supportive Comments

### 1. Air Quality Demonstration

Section 4.3 identifies the circumstances under which a person requesting an administrative update must provide information to the Director. While we certainly recognize the sound public policy that is involved in providing the Director with adequate information upon which to assess the merit of proposed changes, we discussed at great length in the stakeholder process the importance of not unduly burdening this process, given the extremely minor nature of the changes that are being contemplated

Accordingly, on the critical issue of the extent to which a source would need to submit information assessing potential impact on ambient air quality, we understand that we have reached agreement that no such information would need to be submitted by the permittee unless there was a determination by the Director that there was a potential for significant ambient air quality impact.

The change which has been made by OAQ to the last sentence of Section 4.3 adequately addresses this issue by making it clear that there is no independent duty placed on the person requesting an administrative update to make a demonstration of impact on ambient air quality independent of a request by the Director.

### 2. Exempt De minimus sources from permitting

The proposed revision to Regulation 13 contains for the first time, a list of sources that, by the rule's own terms, are deemed to have insignificant emissions and/or be sources that do not usually have quantifiable emissions which can be practically regulated in determining potential to emit or actual emission changes for purposes of determining whether a permit is required under this rule. Throughout our negotiations of this provision during the stakeholder process, the participants agreed that items identified on the de minimus source list would not otherwise be subject to permitting as either the construction, modification or relocation of a stationary source

It is therefore extremely significant that OAQ has proposed that the definitions of stationary source and modification exempt de minimus sources from the thresholds which apply to a determination of whether a source qualifies as a stationary source.

We strongly support the proposed changes.

### 3. Modification trigger at 6 pph

The Chamber supports the change in the "modification" threshold (§2.17 a) from 2 pph to 6 pph of volatile organic compounds and regulated air pollutants.

Significantly, this change eliminates an important inconsistency between the definition of "modification" and the definition of "stationary sources."

### 4. Incorporation of Federal VOC Definition

The Chamber is strongly supportive of the proposal by OAQ to incorporate by reference the USEPA definition of "volatile organic compound." Incorporation by reference will eliminate the significant risk that is involved with the retyping of such a technical definition.

### 5. Pre-permitting Work

The Chamber also supports the provisions which have been added to §5.1 which authorize a number of activities to occur in advance of the issuance of a permit All of these activities, of course, are being undertaken at the risk of the permit applicant in the event that OAQ elects not to issue a permit. These types of authorizations are common to regulatory programs of other states and are critical to eliminating the burdensome nature of this regulation. Attention is called to the provisions of §5.2, however, which assure that no facility may actually be constructed. Accordingly, these are activities that do not involve any environmental impact and can be undertaken with assurance that no emissions to the environment will occur as a result of these activities in advance of permit issuance.

### 6. Public Notice

The Chamber supports the wholesale revisions which have been incorporated into Section 8 of this proposal. These public notice requirements eliminate the unprecedented two-step public notice process that currently burdens Regulation 13. We are pleased to be able to support the proposal for putting new public notice in place that was advanced by the public interest stakeholders.

### 7. Temporary Permits

The Chamber supports the proposed revisions to Section 11 of the regulation which provide for the issuance of temporary permits, not only in the case of experimental testing, but also in the case of commercial development and other temporary purposes. These permits are of a limited nature, but are of the type of regulatory action that signal that the Agency is willing to add flexibility to the program where environmental protection is not compromised

**8. De minimus Source Authorization**

OAQ has provided for a significant number of limited exemptions from the permitting requirements of this regulation. While we recognize that many of these exemptions are of an extremely limited and minor nature, it is our hope that this type of initiative will be of some benefit in taking out the most minor of sources involved. We have urged that an additional category be established for research and development facilities. We have also urged for modifications to the category related to criteria pollutants and to the category related to hazardous air pollutants and toxic air pollutants. The list of de minimus sources establishes an important regulatory precedent that we support and encourage for future expansion and development.

**9. Administrative Updates**

The new section related to administrative updates also presents an important regulatory development. In circumstances involving extremely minor changes to permits, the regulation will now enable a permit to be modified through an effective and efficient process. We have made several additions for how this provision might be further improved and we encourage OAQ to give serious consideration to utilizing administrative updates wherever possible to reduce the regulatory burden of these permitting requirements.

The West Virginia Chamber of Commerce sincerely appreciates the opportunity to comment on these rules. We acknowledge the extraordinary effort and commitment of time and resources that which has been undertaken by OAQ in an effort to bring about this stakeholder process. We commend OAQ, DEP, and Governor Underwood for the leadership each have provided in making this stakeholder process a reality.

Very truly yours,

David M. Flannery
Chair, Environmental Committee
West Virginia Chamber of Commerce

DMF/vlr
cc: Mr. Stephen G. Roberts, President
WV Chamber of Commerce

Tammy
Karen –
Bev McKeone

Karen

UNION CARBIDE

UNION CARBIDE CORPORATION
P.O. BOX 8361, SOUTH CHARLESTON, WV 25303

October 6, 1999

*Certified Mail*
*Return Receipt Requested*

Mr. E. L. Kropp, Chief
WV Office of Air Quality
1558 Washington Street East
Charleston, WV 25303

Dear Mr. Kropp:

Union Carbide Corporation (UCC) appreciates this opportunity to provide comments on the Agency's proposed revisions to Regulation 13 filed with the Secretary of State's Office on September 12, 1999. We understand the considerable amount of work that has been expended to prepare a draft regulation which has been reviewed and discussed with the Stakeholders' group during the past months. Based upon our review of the draft rule, some progress has been made in simplifying and improving the permit review process. However, the Agency's proposal to subject all hazardous air pollutants to minor source review process will have a significant, detrimental effect on UCC research and development (R&D) activities. We submit these comments in the hope that the Agency will understand the impact of its proposal on research and development facilities so that the regulations that are finally promulgated will allow R&D opportunities to continue to be pursued in the State of West Virginia.

The Union Carbide Corporation Technical Center's research activities are vital to the Corporation's business interests, especially in the competitive global economic environment facing our industry. The ability to conduct research to optimize our existing commercial enterprises, as well as pursue new market opportunities as customer needs change, provides Union Carbide with a competitive advantage. As discussed below, some proposed Regulation 13 provisions will adversely affect research and development activities and provide little, if any, concomitant benefit for the protection of public health and the environment.

Of particular concern is the Agency's apparent intention to make all hazardous air pollutants regulated under Section 112 of the federal Clean Air Act "regulated air pollutants" (Section 2.21). If this proposal becomes law, then any change in the method of operation of an emission unit (Section 5.11) which increases emissions or results in the emission of a hazardous air regulated pollutant by 0.1 lbs/hr will require advance notification to the OAQ. The number of notifications required for a research and development facility such as the Union Carbide Technical Center will be excessive.

*Example #1:*
An existing laboratory releases about 0.2 lbs/hr (5 pounds per day) of a process solvent (*e.g.*, methanol, a specific chemical to become a regulated pollutant under the proposed regulation) to a hood. The chemist believes that a different solvent (*e.g.*, methyl ethyl ketone, MEK) will provide better analytical results with air emissions of comparable amounts. Apparently Section 5.13 will require that we notify the Agency before implementing the change because a new regulated pollutant (MEK) will be released. The Agency has up to 30 days to confirm our interpretation that a Regulation 13 permit is not needed.

*Example #2:*
Suppose the same laboratory described in Example #1 finds that the amount of solvent needed is actually 0.25 lbs/hr (6 pounds per day) rather than the 5 pounds per day that was documented by prior Agency notification. Section 5.11 will require that a second notification be submitted since the prior notification is no longer accurate.

The notifications required become unmanageable, in fact virtually impossible, when the above or similar scenarios could easily be repeated in a number of different laboratories. (There are approximately 475 laboratories at the South Charleston Technical Center.)

Section 2.6 of proposed Regulation 13 defines "De minimis source." We understand that the intent of this proposed change is to clearly exempt activities and emission units which have insignificant emissions from new source review. We support this Agency action because the described activities have virtually no impact on air quality and do not warrant consideration for review under the permitting regulation. However, we do not understand the Agency's intent requiring that all de minimis sources from Tier II equipment must be aggregated, quantified, and monitored for purposes of determining whether a modification or construction has occurred. One could interpret this to mean that emissions from all laboratories at the Technical Center must keep an up-to-the-minute account of emissions from each laboratory. When the aggregate reaches 1 lb/hr for a criteria pollutant (Tier II, Item 5) or reaches 0.1 lbs/hr for hazardous pollutants (Tier II, Item 6), the facility (the entire site) would be required to file a permit notification. Section 2.6.c indicates that, if the aggregate emissions during a two-year period reach 6 lbs/hr of a criterion's pollutant and/or 2 lbs/hr of hazardous pollutants, a Regulation 13 permit must be obtained. Furthermore, it is not clear if all the sources undergoing changes during the two-year period would then require a permit or just the last change which resulted in emissions exceeding 2 lbs/hr of HAPs.

Due to very small emissions, we hope that the Agency will consider including individual research and development laboratories at a Technical Center such as UCC's as Tier 1 "*de minimis* sources." Emissions from the Technical Center are historically low. For 1998, emissions of all hazardous air pollutants from laboratory activities at the UCC Technical Center totaled about 2 tons. The addition of research and development laboratories to the *de minimis* list is consistent with the definition of "*De minimis* source" (Section 2.6), which provides that emissions from such sources are usually not quantifiable and cannot be practically regulated in determining potential to emit. Good laboratory management practices (*e.g.*, using cold traps to capture volatiles during experimentation, keeping containers closed when not in use, *etc.*) limit emissions to very small amounts. However, we would not want on-going advances in instrumentation, which allow quantification of emissions at lower and lower levels, to disqualify research and development laboratories from the *de minimis* source exclusion.

Another factor considered in determining if a modification occurs under Regulation 13 is potential to emit. However, the potential to emit (PTE) for experimental work is meaningless. To determine PTE, there must be basic information to estimate emissions (equipment specifications, process flow information, reaction chemistry, reaction rates, catalyst efficiencies, hours of operation, *etc.*). Much of this information is the desired "product" from experimental work. Typically an experiment will run from a few hours to several days, after which equipment arrangements, operating parameters, materials, *etc.*, are changed. One interpretation of Regulation 13 could be that PTE must be calculated for each of these changes and, perhaps, a notification and/or permit modification application filed. This will be a major detriment for research and development facilities.

*Example #3:*
An existing laboratory is equipped with a distillation column. The distillation column is used on an "as-needed" basis to obtain materials separation data for use in scale-up operations or commercial applications. The column is equipped with a condenser to condense column off-gas vapors. The condensate is either saved for further analytical work and/or disposed of per approved site procedures. Prior activities involved separation studies for amines. Distillation (simulation) data is now needed to determine whether it is technically feasible to refine a stream from a commercial unit to recover raw material. The waste stream to be studied will have one or more chemicals which are hazardous air pollutants that were not present in prior distillation studies. Engineering calculations indicate that at least 99% of the hazardous air pollutants fed to the column (20 lbs/hr) will be separated, condensed and recovered for analysis and/or disposal. Therefore, emissions to the air would be 0.2 lbs/hr. Because the new distillation project will have the potential to discharge a new "regulated" pollutant at a rate greater than 0.1 lbs/hr, proposed Regulation 13 will require that an Agency notification be provided. *(Note: Assuming that 160 hours [4 weeks operation at 8 hrs/day] of actual on-stream distillation time is needed to complete the work, actual emissions to the air for the project would be 32 lbs. Using 8,760 hrs/yr operation [1 year], actual emissions would be grossly over estimated as 1,752 pounds.)*

In the event that the Agency cannot agree to exempt research and development laboratories as Tier 1 *"de minimis* sources", we request that the Agency add a new Tier II Item to Table 45-13B as follows:

*Suggested language for Item 7.*

*7. Research and development laboratories, which are not engaged in the production of chemicals for commercial sale except in de minimis amounts and which are not subject to any other rule of the Director pursuant to W. Va. Code 22-5-1 et seq., so long as the particular physical change or change in method of operation which will result in increased emissions to the atmosphere are equal to or below the following amounts, based upon estimated actual operating hours and operating conditions associated with the change:*

*7.1a. carbon monoxide, nitrogen oxides, sulfur dioxide, VOC and particulate matter at a rate less than 1 ton per year for each pollutant.*
*7.2a toxic air pollutants or hazardous air pollutants at a rate less than 500 pounds per year for each pollutant.*

We continue to believe that Regulation 13 should be used to address criteria pollutants for which National Ambient Air Quality Standards have been set as well as the limited number of toxic air pollutants covered by Regulation 27. When the last major revisions to the Federal Clean Air Act were enacted in 1990, which called for increased and faster regulation of sources of hazardous air pollutants, a provision, §(112(b)(6), was specifically added to avoid major new source review in the event of increases in such pollutants. It was recognized that these pollutants also fit within larger categories (VOCs, particulates) and that increases in emissions of those categories could trigger review. We urge the OAQ to take a similar stance.

If you would like to discuss our comments in more detail, please contact Jack Worstell (747-3169), Freddie Sizemore (747-3713), or me (747-2335).

Sincerely,

M J Hendricks

M. J. Hendricks
Site Manager

MJH/FAS 1260--cc-4574

cc: Mr. Terry Polen, Assistant Chief
WV Office of Air Quality

Tammy
Karen -
Bev McKeirs

Karen


Law Offices

Robinson & McElwee LLP

P. O. Box 1791

Charleston, West Virginia 25326

Telephone (304) 344-5800
Telefax (304) 344-9566

600 United Center
500 Virginia Street, East
Charleston, West Virginia 25301

Christopher B. Power
Direct Dial No. (304) 347-8303
E-mail. cbp@ramlaw.com

Clarksburg Office
P.O. Box 128
Clarksburg, West Virginia 26302
Telephone (304) 622-5022
Telefax (304) 622-5065


October 12, 1999

Mr. Edward L. Kropp, Chief
Office of Air Quality
W.Va. Div. Of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311-2599

**Re: Proposed Revisions to 45 CSR 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" Comments of CDX Gas, LLC**

Dear Mr. Kropp:

The following comments are submitted on behalf of CDX Gas, LLC ("CDX"). CDX is engaged in the exploration and development of coalbed methane in West Virginia. As a result, CDX is concerned with the permitting provisions of 45 CSR 13 ("Regulation 13") and may be directly affected by proposed changes to this regulation.

It is our understanding that the proposed amendments to Regulation 13 are at least partially the result of the proceedings of an Office of Air Quality ("OAQ") Regulatory Workgroup which was formed some time ago for the purpose of reviewing Regulation 13. Some of the primary goals of that Workgroup, as we understood it, were the elimination of unnecessary provisions, the simplification of the minor source permitting program, and in general the streamlining of air permitting for minor sources in West Virginia, in a manner that is consistent with continued protection of the environment and fair public participation in the permitting process. After reviewing these proposed revisions to Regulation 13, CDX is greatly concerned that these goals have been abandoned.

Indeed, rather than update and streamline Regulation 13, it is our belief that the proposed amendments would only serve to further complicate the permitting process and impose unnecessarily burdensome requirements on the regulated community.

As an initial matter, CDX requests that the OAQ consider inserting a sentence in the "scope" section of this rule clarifying that it is not intended to apply to nonroad engines, nonroad vehicles, motor vehicles, or other sources regulated under subchapter 11 of the federal Clean Air Act. Although we understand this to be the case, such an additional statement might help avoid any confusion about this issue.

With respect to the specific proposed amendments to Regulation 13, CDX is particularly concerned with the following proposed changes:

1. **Subsections 2.17 and 2.24: Thresholds for "Modification" and "Stationary Source"**

The 5 tons per year ("TPY") permitting thresholds for modifications and construction of stationary sources should be increased to reflect the stated 6 lbs./hr. threshold. The proposed revisions to the definitions of "modification" and "stationary source" in sections 2.17 and 2.24, respectively, effectively reduce the threshold for year-round units from the stated 6 lbs./hr. to 1.2 lbs./hr. Because CDX operates several pieces of equipment at its facilities which must be treated as potentially operating "year-round" (i.e., 8,760 hours per year), such a change would have a substantial detrimental effect on the continuation and expansion of our operations.

The proposed revision to the definition for "modification" sets the threshold at 6 lbs./hr. However, since the agency has not proposed to change the existing 5 TPY threshold, this effectively reduces the lbs./hr. threshold for year-round units from the current 2 lbs./hr. to 1.2 lbs./hr. Similarly, the proposed revision to the definition for "stationary source" adds an additional threshold of 5 TPY to the 6 lbs./hr. threshold, thereby reducing the effective lbs./hr. threshold to 1.2 lbs./hr for sources that must have the flexibility to operate year-round.

We are aware of no environmental benefit to be gained by subjecting these year-round units to such a low threshold. Certainly, the agency has not identified any instances in which the failure to permit year-round source changes resulting in less than 6 lbs./hr. in potential increased emissions has substantially contributed to the violation of ambient air quality standards or otherwise caused harm to the public or the environment.

Accordingly, we suggest these aspects of these provisions be changed in one of the following ways: (1) eliminate the 5TPY threshold in both provisions, or increase it to a more reasonable level; (2) add a proviso to the effect that the 5 TPY threshold does not apply to units which are presumed to operate for 8,760 hours per year; or (3) allow sources to petition the Director, on a case-by-case basis, for an exception to the TPY permitting threshold, where source construction or modification would not trigger the lbs./hr. permit threshold but would exceed the 5 TPY limit to an insignificant extent. (The determination on such an exception request should be required to be based on demonstrated potential impact on maintenance of ambient air quality standards or actual harm to the public or environment should an exception be granted.)

## 2. Subsection 2.17.f.6: In-Kind "Replacement" of Natural Gas Compressors

Subsection 2.17.f.6 allows the Director to determine, upon written request, that a replacement of a natural gas compressor engine not previously required to obtain a permit "results in am emissions reduction from current actual emissions to new potential emissions...." This proposed new provision is troubling and confusing for several reasons.

First, in determining whether modification thresholds are reached the only appropriate comparison is between future potential-to-emit and current potential-to-emit (for grandfathered units without permits) or current allowables (for units with permits). This is the manner in which sources in West Virginia have applied Regulation 13 for many years, and this is clearly a permissible and reasonable interpretation of the current rule. To the extent that proposed subsection 2.17.f.6 suggests that this should be changed, we strongly disagree with this.

Second, there should be no doubt that where a change to a facility involves replacement with a like-kind emission unit (one engine with another of same or closely similar design), the PTE of the existing engine should be considered in determining whether there has been an increase in PTE. There is no reason to penalize operators for merely replacing existing units.

## 3. Subsection 2.6.: Quantification, Monitoring, and Aggregation of "Tier II" De Minimus Sources

Requiring the quantification, monitoring, and aggregation of "Tier II" de minimus sources is unduly burdensome and inconsistent with the apparent purpose of recognizing the existence of de minimus sources. The definition of "de minimus source" states that such sources usually do <u>not</u> have quantifiable emissions which can be practically regulated and therefore included in calculating a source's potential to emit ("PTE"). However, the definition <u>also</u> requires that facilities quantify and monitor emissions from Tier II equipment or activities to determine whether the emissions meet the threshold for "modification" or "construction" -- with no apparent time limit on such aggregation.

This requirement is unrealistic and unnecessary For example, since "fugitive particulate emissions related to movement of personal passenger vehicles" is a Tier II activity, a facility would be required to quantify and monitor such emissions. Essentially, this would require a facility to estimate the emissions created by cars and trucks on the facility's internal roads and parking areas. Conceivably, each time new employees were hired or customer visits increased, the facility would be required to estimate the increase in PTE from such events, and thereafter constantly reassess whether the resulting emissions exceed the threshold for "modification" or "construction." In addition to the practical difficulties in arriving at reliable PTE figures for such activities, the monitoring and recordkeeping required for such estimations would create a new set of administrative duties.

For purposes of New Source Review involving major sources, EPA rules indicate that if there is a significant change which triggers a modification permitting threshold, then increases and decreases in actual emissions at the facility within 5 years preceding the change are included in determining the PTE resulting from the change. If, however, there is no significant increase in emissions from a particular action, EPA has stated that individually insignificant emissions increases from separate projects are not to be aggregated in determining whether the threshold significance levels are exceeded by any single change. See EPA New Source Review Workshop Manual (Oct. 1990 Draft version); January 5, 1983 by Chief, EPA Regulations Analysis Section, Stationary Source Compliance Division.

The proposed regulation involving Tier II de miminus sources would go much farther than EPA's major source program: it would require aggregation of de minimus, minor sources without even limiting such aggregation requirement to any particular contemporaneous timeframe. We believe this violates the spirit if not the lettter of West Virginia law prohibiting the OAQ from promulgating legislative regulations which are more stringent than federal law, unless a demonstration of need is made. See W.Va. Code § 22-5-4(a)(4). Although the OAQ is required to have some type of new source review program affecting minor sources, it is not required to impose one with these types of cumbersome, overly detailed and stringent requirements. We urge the OAQ to delete this requirement from the proposed regulation.

**4. Subsection 2.6.b.: Debottlenecking De Minimus Activities**

The proposed provision governing de minimus emissions requires those Tier I and Tier II activities which "amend or change (e.g., debottleneck) a process operation" to be used in determining whether the aggregate of all upstream and downstream emissions trigger the modification or construction permitting thresholds. We are concerned that the term "debottleneck" is not further defined. In any event, and particularly in light of the restrictive manner in which Tier I and Tier II de minimus activities are defined, it is unclear how often this provision would apply.

**5. Subsections 2.20.c and 2.20.f: Definition of Regulated Pollutants**

This proposed provision adds to the list of "regulated pollutants" any air pollutant that is subject to a New Source Performance Standard ("NSPS") promulgated under § 111 of the Clean Air Act or subject to a National Emission Standard for Hazardous Air Pollutant ("NESHAP") promulgated under § 112 of the Clean Air Act. Presumably (consistent with EPA rules and policies), the OAQ only intends to treat a pollutant as "regulated" for the source categories specified in the NSPS or NESHAPs for that pollutant. It would be helpful if the proposed subsections included language to clarify this issue.

**6. Section 4: Administrative Updates**

Although we strongly support and appreciate the OAQ's willingness to eliminate unnecessary delays associated with minor, insignificant permit changes, we believe the proposed procedures for making administrative updates as set forth in Section 4 can be greatly simplified. A source owner should be able to make such changes quickly and easily, with minimum bureaucracy. Instead, this section sets forth a procedure worthy of a flow diagram. Where the OAQ determines that a proposed change does not trigger permitting requirements, the agency should retain broad discretion to approve of such without the need for consulting a checklist of permissible changes and/or requiring advance public notice.

Moreover, subsection 4.1.1a., allowing the Director to deny an administrative update, should be deleted. There should be no option for the Director to deny a change fitting within any of the categories in section 4.2 on any grounds other than that the requested change constitutes a modification. (Similarly, section 4.1.b. should be simplified to allow denial only where a finding is made that the change constitutes a modification.) Further, to preserve the rights of a permittee, all denials should be subject to appeal, contrary to the proposed subsection 4.1.c.

The public notice and "permit application fee" for Class II administrative updates are also especially burdensome. Essentially, Sections 4.1.d and 4.4 require the permittee to provide 15 days' notice to the public via legal advertisement and pay a $300 "permit application fee" upon requesting the update from the Director. These updates, by definition, are minor changes which merely reflect source changes which cannot involve significant changes in emissions. The public notice requirement and imposition of a $300 fee for a mere administrative change are unduly burdensome and prohibitory.

## 7. Subsections 5.1 - 5.3: Pre-Permit Activities

We applaud the agency for attempting to clarify which activities may be undertaken at a site prior to issuance of a Regulation 13 permit, as set forth in proposed subsection 5.1. We offer two suggestions which we believe will improve these provisions.

First, although it is implied by proposed subsection 5.2 and is arguably permissible under present law, we urge the OAQ to add to the list of permissible pre-permit activities the delivery of materials to a site, including equipment which is mass manufactured or arrives prefabricated. As long as the actual installation remains prohibited, and the operator is not allowed to make any changes to the delivered components to render them operable, such an addition to the list should present no concern to the agency. Again, we believe this is generally permissible under EPA's New Source Review program governing major sources, and there is no reason that it should not be acceptable under West Virginia's minor source program.

Second, subsection 5.3 should clarify that a permittee will not be subject to penalties for actually undertaking the listed activities in good faith before obtaining a permit. It is our understanding that the intent of this provision is to prevent facility owners/operators from relying on the fact that they conducted subsection 5.1 activities or made investments in connection therewith, as a basis for asserting that they are equitably entitled to a permit. We have no objection to this, but it appears the language in this provision needs to be tightened to eliminate the possibility of interpreting it in such a way that a facility owner/operator may still be subject to penalties for conducting such activities in good faith before there was any reason to believe that a permit would be required.

## 8. Section 8.3: Public Review Procedures - Administrative Updates/Temporary Permits

Administrative updates and temporary permits are by their nature, minor and impermanent, and are intended to provide some relief from otherwise unwieldy requirements. Requiring public notice for these minor actions is counter-intuitive and will only serve to delay such relief. There is no need for the public to be involved in the issuance of an administrative update to a permit or a temporary permit. The proper point for public participation is at the point when a new or amended permit will be issued, since it is only beyond that point that a member of the public may be significantly affected.

* * * *

CDX appreciates having the opportunity to present these comments. We recognize that the agency has made a substantial commitment of resources in reviewing and proposing changes aimed at improving Regulation 13 permitting, and we thank you for recognizing the deficiencies and for attempting to address several long-standing concerns.

With the additional changes identified above, we believe the Regulation 13 permitting process would be considerably improved without sacrificing the agency's role in implementing a program for the comprehensive management of air quality in West Virginia.

Thank you for your consideration of these matters.

Sincerely,

Christopher B. Power

Christopher B. Power
Counsel, CDX Gas LLC

cc: Joseph A. Zupanick, P.E.
Vice President, Operations

Kammy
Karen
Bev McKeone

Karen

CHRISTOPHER B. POWER
DIRECT DIAL NO. (304) 347-8303
E-MAIL: cbp@ramlaw.com

LAW OFFICES
ROBINSON & McELWEE LLP
P. O. BOX 1791
CHARLESTON, WEST VIRGINIA 25326
TELEPHONE (304) 344-5800
TELEFAX (304) 344-9566

600 UNITED CENTER
500 VIRGINIA STREET, EAST
CHARLESTON, WEST VIRGINIA 25301

CLARKSBURG OFFICE
P O BOX 128
CLARKSBURG, WEST VIRGINIA 26302
TELEPHONE (304) 622-5022
TELEFAX (304) 622-5065

OFFICE OF AIR QUALITY
'99 OCT 12 P 4:

RECEIVED

October 12, 1999

Hand-Delivered
Mr. Edward L. Kropp, Chief
Office of Air Quality
W.Va. Div. Of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311-2599

Re: **Proposed Revisions to 45 CSR 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" Comments of Consolidation Coal Company**

Dear Mr. Kropp:

The following comments are submitted on behalf of Consolidation Coal Company (CONSOL). CONSOL operates coal mines and related facilities in seven states, including several operations in West Virginia. As a result, CONSOL is subject to the permitting provisions of 45 CSR 13 ("Regulation 13") and may be directly affected by proposed changes to this regulation.

It is our understanding that the proposed amendments to Regulation 13 are at least partially the result of the proceedings of an Office of Air Quality ("OAQ") Regulatory Workgroup which was formed some time ago for the purpose of reviewing Regulation 13. Some of the primary goals of that Workgroup, as we understood it, were the elimination of unnecessary provisions, the simplification of the minor source permitting program, and in general the streamlining of air permitting for minor sources in West Virginia, in a manner that is consistent with continued protection of the environment and fair public participation in the permitting process. After reviewing these proposed revisions to Regulation 13, CONSOL is greatly concerned that these goals have been abandoned.

Indeed, rather than update and streamline Regulation 13, it is our belief that the proposed amendments would only serve to further complicate the permitting process and impose unnecessarily burdensome requirements on the regulated community.

In particular, CONSOL is concerned with the following proposed changes:

**1. Subsections 2.17 and 2.24: Thresholds for "Modification" and "Stationary Source"**

The proposed revision to the definition for "modification" increases the hourly threshold from 2 lbs/ hr. to 6 lbs./hr. However, since the agency has not proposed to change the existing 5 TPY threshold, this does not grant relief for year-round units, which will be required to obtain a permit for changes resulting in a 1.2 lbs./hr. increase in emissions.

Similarly, the proposed revision to the definition for "stationary source" adds an additional threshold of 5 TPY to the existing 6 lbs./hr. hourly threshold. Thus, the effective lbs./hr. permitting threshold for construction of new sources is actually reduced from 6 lbs./hr. to 1.2 lbs./hr for sources that must have the flexibility to operate year-round.

Because CONSOL operates several pieces of equipment at its facilities which must be treated as potentially operating "year-round" (i.e., 8,760 hours per year), these changes would have an unnecessary detrimental effect on the continuation and expansion of our operations.

We are aware of no environmental benefit to be gained by subjecting these year-round units to such a low threshold. Certainly, the agency has not identified any instances in which the failure to permit year-round source changes resulting in less than 6 lbs./hr. in potential increased emissions has substantially contributed to the violation of ambient air quality standards or otherwise caused harm to the public or the environment.

Accordingly, we suggest these aspects of these provisions be changed in one of the following ways: (1) eliminate the 5TPY threshold in both provisions, or increase it to a more reasonable level; (2) add a proviso to the effect that the 5 TPY threshold does not apply to units which are presumed to operate for 8,760 hours per year; or (3) allow sources to petition the Director, on a case-by-case basis, for an exception to the TPY permitting threshold, where source construction or modification would not trigger the lbs./hr. permit threshold but would exceed the 5 TPY limit to an insignificant extent. (The determination on such an exception request should be required to be based on demonstrated potential impact on maintenance of ambient air quality standards or actual harm to the public or environment should an exception be granted.)

## 2. Subsection 2.17.f.6: In-Kind "Replacement" of Natural Gas Compressors

Subsection 2.17.f.6 allows the Director to determine, upon written request, that a replacement of a natural gas compressor engine not previously required to obtain a permit "results in an emissions reduction from current actual emissions to new potential emissions...." This proposed new provision is troubling and confusing for several reasons.

First, in determining whether modification thresholds are reached the only appropriate comparison is between future potential-to-emit and current potential-to-emit (for grandfathered units without permits) or current allowables (for units with permits). This is the manner in which sources in West Virginia have applied Regulation 13 for many years, and this is clearly a permissible and reasonable interpretation of the current rule. To the extent that proposed subsection 2.17.f.6 suggests that this should be changed, we strongly disagree with this.

Second, there should be no doubt that where a change to a facility involves replacement with a like-kind emission unit (one engine with another of same or closely similar design), the PTE of the existing engine should be considered in determining whether there has been an increase in PTE. There is no reason to penalize operators for merely replacing existing units with substantially equivalent ones. The specific exclusion found at subsection 2.17.f.2 addresses this issue, but we are concerned that it may be open to an interpretation that is overly stringent for this minor source program. Accordingly, we suggest that the agency consider either deleting the proposed language in 2.17.f.6, or revising it so that it is applicable to all sources and clarifies the applicable policy for replacement with like-kind units (as stated at the beginning of this paragraph).

## 3. Subsection 2.6.: Quantification, Monitoring, and Aggregation of "Tier II" De Minimus Sources

Requiring the quantification, monitoring, and aggregation of "Tier II" de minimus sources is unduly burdensome and inconsistent with the apparent purpose of recognizing the existence of de minimus sources. The definition of "de minimus source" states that such sources usually do <u>not</u> have quantifiable emissions which can be practically regulated and therefore included in calculating a source's potential to emit ("PTE"). However, the definition <u>also</u> requires that facilities quantify and monitor emissions from Tier II equipment or activities to determine whether the emissions meet the threshold for "modification" or "construction" -- with no apparent time limit on such aggregation.

This requirement is unrealistic and unnecessary For example, since "fugitive particulate emissions related to movement of personal passenger vehicles" is a Tier II activity, a facility would be required to quantify and monitor such emissions. Essentially, this would require a facility to estimate the emissions created by cars and trucks on the facility's internal roads and parking areas. Conceivably, each time new employees were hired or customer visits increased, the facility would be required to estimate the increase in PTE from such events, and thereafter constantly reassess whether the resulting emissions exceed the threshold for "modification" or "construction." In addition to the practical difficulties in arriving at reliable PTE figures for such activities, the monitoring and recordkeeping required for such estimations would create a new set of administrative duties.

For purposes of New Source Review involving major sources, EPA rules indicate that if there is a significant change which triggers a modification permitting threshold, then increases and decreases in actual emissions at the facility within 5 years preceding the change are included in determining the PTE resulting from the change. If, however, there is no significant increase in emissions from a particular action, EPA has stated that individually insignificant emissions increases from separate projects are not to be aggregated in determining whether the threshold significance levels are exceeded by any single change. See EPA New Source Review Workshop Manual (Oct. 1990 Draft version); January 5, 1983 by Chief, EPA Regulations Analysis Section, Stationary Source Compliance Division.

The proposed regulation involving Tier II de miminus sources would go much farther than EPA's major source program: it would require aggregation of de minimus, minor sources without even limiting such aggregation requirement to any particular contemporaneous timeframe. We believe this violates the spirit if not the lettter of West Virginia law prohibiting the OAQ from promulgating legislative regulations which are more stringent than federal law, unless a demonstration of need is made. See W.Va. Code § 22-5-4(a)(4). Although the OAQ is required to have some type of new source review program affecting minor sources, it is not required to impose one with these types of cumbersome, overly detailed and stringent requirements. We urge the OAQ to delete this requirement from the proposed regulation.

## 4. Subsections 2.20.c and 2.20.f: Definition of Regulated Pollutants

This proposed provision adds to the list of "regulated pollutants" any air pollutant that is subject to a New Source Performance Standard ("NSPS") promulgated under § 111 of the Clean Air Act or subject to a National Emission Standard for Hazardous Air Pollutant ("NESHAP") promulgated under § 112 of the Clean Air Act. Presumably (consistent with EPA rules and policies), the OAQ only intends to treat a pollutant as "regulated" for the source categories specified in the NSPS or NESHAPs for that pollutant. It would be helpful if the proposed subsections included language to clarify this issue.

## 5. Section 4: Administrative Updates

Although we strongly support and appreciate the OAQ's willingness to eliminate unnecessary delays associated with minor, insignificant permit changes, we believe the proposed procedures for making administrative updates as set forth in Section 4 can be greatly simplified. A source owner should be able to make such changes quickly and easily, with minimum bureaucracy. Instead, this section sets forth a procedure worthy of a flow diagram. Where the OAQ determines that a proposed change does not trigger permitting requirements, the agency should retain broad discretion to approve of such without the need for consulting a checklist of permissible changes and/or requiring advance public notice.

Moreover, subsection 4.1.1a., granting the Director broad discretionary authority to deny an administrative update, should be deleted or revised. There should be no option for the Director to deny a change fitting within any of the categories in section 4.2 on any grounds other than that the requested change constitutes a modification. (Similarly, section 4.1.b. should be simplified to allow denial only where a finding is made that the change constitutes a modification.) In addition, at least as to Class I administrative updates, we suggest that the Director should be in a position to grant or deny such an application within thirty (30) rather than 60 days. Further, to preserve the rights of a permittee, all denials should be subject to appeal, contrary to the proposed subsection 4.1.c.

The public notice and "permit application fee" for Class II administrative updates are also especially burdensome. Essentially, Sections 4.1.d and 4.4 require the permittee to provide 15 days' notice to the public via legal advertisement and pay a $300 "permit application fee" upon requesting the update from the Director. These updates, by definition, are minor changes which merely reflect source changes which cannot involve significant changes in emissions. The public notice requirement and imposition of a $300 fee for a mere administrative change are unduly burdensome and prohibitory.

## 6. Subsections 5.1 - 5.3: Pre-Permit Activities

We applaud the agency for attempting to clarify which activities may be undertaken at a site prior to issuance of a Regulation 13 permit, as set forth in proposed subsection 5.1. We offer two suggestions which we believe will improve these provisions.

First, although it is implied by proposed subsection 5.2 and is arguably permissible under present law, we urge the OAQ to add to the list of permissible pre-permit activities the delivery of materials to a site, including equipment which is mass manufactured or arrives prefabricated. As long as the actual installation remains prohibited, and the operator is not allowed to make any changes to the delivered components to render them operable, such an addition to the list should present no concern to the agency. Again, we believe this is generally permissible under EPA's New Source Review program governing major sources, and there is no reason that it should not be acceptable under West Virginia's minor source program.

Second, subsection 5.3 should clarify that a permittee will not be subject to penalties for actually undertaking the listed activities in good faith before obtaining a permit. It is our understanding that the intent of this provision is to prevent facility owners/operators from relying on the fact that they conducted subsection 5.1 activities or made investments in connection therewith, as a basis for asserting that they are equitably entitled to a permit. We have no objection to this, but it appears the language in this provision needs to be tightened to eliminate the possibility of interpreting it in such a way that a facility owner/operator may still be subject to penalties for conducting such activities in good faith before there was any reason to believe that a permit would be required.

## 7. Section 8.3: Public Review Procedures - Administrative Updates/Temporary Permits

Administrative updates and temporary permits are by their nature, minor and impermanent, and are intended to provide some relief from otherwise unwieldy requirements. Requiring public notice for these minor actions is counter-intuitive and will only serve to delay such relief. There is no need for the public to be involved in the issuance of an administrative update to a permit or a temporary permit. The proper point for public participation is at the point when a new or amended permit will be issued, since it is only beyond that point that a member of the public may be significantly affected.

* * * *

CONSOL appreciates having the opportunity to present these comments. We recognize that the agency has made a substantial commitment of resources in reviewing and proposing changes aimed at improving Regulation 13 permitting, and we thank you for recognizing the deficiencies and for attempting to address several long-standing concerns.

With the additional changes identified above, we believe the Regulation 13 permitting process would be considerably improved without sacrificing the agency's role in implementing a program for the comprehensive management of air quality in West Virginia.

Thank you for your consideration of these matters.

Sincerely,

Christopher B. Power

Christopher B. Power
Counsel, Consolidation Coal Company

Tammy
Karen ✓
Bev McKeone

Karen

LAW OFFICES
ROBINSON & MCELWEE LLP
P. O. BOX 1791
CHARLESTON, WEST VIRGINIA 25326

CHRISTOPHER B POWER
DIRECT DIAL NO (304) 347-8303
E-MAIL cbp@ramlaw.com

TELEPHONE (304) 344-5800
TELEFAX (304) 344-9566

600 UNITED CENTER
500 VIRGINIA STREET, EAST
CHARLESTON, WEST VIRGINIA 25301

CLARKSBURG OFFICE
P O BOX 128
CLARKSBURG WEST VIRGINIA 26302
TELEPHONE (304) 622-5022
TELEFAX (304) 622 5065



October 12, 1999

Mr. Edward L. Kropp, Chief
Office of Air Quality
W.Va. Div. Of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311-2599

**Re: Proposed Revisions to 45 CSR 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" Comments of Kanawha River Terminals, Inc.**

Dear Mr. Kropp:

The following comments are submitted on behalf of Kanawha River Terminals, Inc. (hereinafter, "KRT"). KRT is a subsidiary of Electric Fuels Corporation, and operates several coal terminals in West Virginia at which coal is processed prior to shipment to endusers via barge, rail, and truck. As a result, KRT is subject to the permitting provisions of 45 CSR 13 ("Regulation 13") and may be directly affected by proposed changes to this regulation.

It is our understanding that the proposed amendments to Regulation 13 are at least partially the result of the proceedings of an Office of Air Quality ("OAQ") Regulatory Workgroup which was formed some time ago for the purpose of reviewing Regulation 13. Some of the primary goals of that Workgroup, as we understood it, were the elimination of unnecessary provisions, the simplification of the minor source permitting program, and in general the streamlining of air permitting for minor sources in West Virginia, in a manner that is consistent with continued protection of the environment and fair public participation in the permitting process. After reviewing these proposed revisions to Regulation 13, KRT is greatly concerned that these goals have been abandoned.

Indeed, rather than update and streamline Regulation 13, it is our belief that the proposed amendments would only serve to further complicate the permitting process and impose unnecessarily burdensome requirements on the regulated community.

In particular, KRT is concerned with the following proposed changes:

1. **Subsections 2.17 and 2.24: Thresholds for "Modification" and "Stationary Source"**

The 5 tons per year ("TPY") permitting thresholds for modifications and construction of stationary sources should be increased to reflect the stated 6 lbs./hr. threshold. The proposed revisions to the definitions of "modification" and "stationary source" in sections 2.17 and 2.24, respectively, effectively reduce the threshold for year-round units from the stated 6 lbs./hr. to 1.2 lbs./hr. Because KRT operates several pieces of equipment at its facilities which must be treated as potentially operating "year-round" (i.e., 8,760 hours per year), such a change would have a substantial detrimental effect on the continuation and expansion of our operations.

The proposed revision to the definition for "modification" sets the threshold at 6 lbs./hr. However, since the agency has not proposed to change the existing 5 TPY threshold, this effectively reduces the lbs./hr. threshold for year-round units from the current 2 lbs./hr. to 1.2 lbs./hr. Similarly, the proposed revision to the definition for "stationary source" adds an additional threshold of 5 TPY to the 6 lbs./hr. threshold, thereby reducing the effective lbs./hr. threshold to 1.2 lbs./hr for sources that must have the flexibility to operate year-round.

We are aware of no environmental benefit to be gained by subjecting these year-round units to such a low threshold. Certainly, the agency has not identified any instances in which the failure to permit year-round source changes resulting in less than 6 lbs./hr. in potential increased emissions has substantially contributed to the violation of ambient air quality standards or otherwise caused harm to the public or the environment.

Accordingly, we suggest these aspects of these provisions be changed in one of the following ways: (1) eliminate the 5TPY threshold in both provisions, or increase it to a more reasonable level; (2) add a proviso to the effect that the 5 TPY threshold does not apply to units which are presumed to operate for 8,760 hours per year; or (3) allow sources to petition the Director, on a case-by-case basis, for an exception to the TPY permitting threshold, where source construction or modification would not trigger the lbs./hr. permit threshold but would exceed the 5 TPY limit to an insignificant extent. (The determination on such an exception request should be required to be based on demonstrated potential impact on maintenance of ambient air quality standards or actual harm to the public or environment should an exception be granted.)

## 2. Subsection 2.17.f.6: In-Kind "Replacement" of Natural Gas Compressors

Subsection 2.17.f.6 allows the Director to determine, upon written request, that a replacement of a natural gas compressor engine not previously required to obtain a permit "results in am emissions reduction from current actual emissions to new potential emissions...." This proposed new provision is troubling and confusing for several reasons.

First, in determining whether modification thresholds are reached the only appropriate comparison is between future potential-to-emit and current potential-to-emit (for grandfathered units without permits) or current allowables (for units with permits). This is the manner in which sources in West Virginia have applied Regulation 13 for many years, and this is clearly a permissible and reasonable interpretation of the current rule. To the extent that proposed subsection 2.17.f.6 suggests that this should be changed, we strongly disagree with this.

Second, there should be no doubt that where a change to a facility involves replacement with a like-kind emission unit (one engine with another of same or closely similar design), the PTE of the existing engine should be considered in determining whether there has been an increase in PTE. There is no reason to penalize operators for merely replacing existing units.

## 3. Subsection 2.6.: Quantification, Monitoring, and Aggregation of "Tier II" De Minimus Sources

Requiring the quantification, monitoring, and aggregation of "Tier II" de minimus sources is unduly burdensome and inconsistent with the apparent purpose of recognizing the existence of de minimus sources. The definition of "de minimus source" states that such sources usually do not have quantifiable emissions which can be practically regulated and therefore included in calculating a source's potential to emit ("PTE"). However, the definition also requires that facilities quantify and monitor emissions from Tier II equipment or activities to determine whether the emissions meet the threshold for "modification" or "construction" -- with no apparent time limit on such aggregation.

This requirement is unrealistic and unnecessary For example, since "fugitive particulate emissions related to movement of personal passenger vehicles" is a Tier II activity, a facility would be required to quantify and monitor such emissions. Essentially, this would require a facility to estimate the emissions created by cars and trucks on the facility's internal roads and parking areas. Conceivably, each time new employees were hired or customer visits increased, the facility would be required to estimate the increase in PTE from such events, and thereafter constantly reassess whether the resulting emissions exceed the threshold for "modification" or "construction." In addition to the practical difficulties in arriving at reliable PTE figures for such activities, the monitoring and recordkeeping required for such estimations would create a new set of administrative duties.

For purposes of New Source Review involving major sources, EPA rules indicate that if there is a significant change which triggers a modification permitting threshold, then increases and decreases in actual emissions at the facility within 5 years preceding the change are included in determining the PTE resulting from the change. If, however, there is no significant increase in emissions from a particular action, EPA has stated that individually insignificant emissions increases from separate projects are not to be aggregated in determining whether the threshold significance levels are exceeded by any single change. See EPA New Source Review Workshop Manual (Oct. 1990 Draft version); January 5, 1983 by Chief, EPA Regulations Analysis Section, Stationary Source Compliance Division.

The proposed regulation involving Tier II de miminus sources would go much farther than EPA's major source program: it would require aggregation of de minimus, minor sources without even limiting such aggregation requirement to any particular contemporaneous timeframe. We believe this violates the spirit if not the lettter of West Virginia law prohibiting the OAQ from promulgating legislative regulations which are more stringent than federal law, unless a demonstration of need is made. See W.Va. Code § 22-5-4(a)(4). Although the OAQ is required to have some type of new source review program affecting minor sources, it is not required to impose one with these types of cumbersome, overly detailed and stringent requirements. We urge the OAQ to delete this requirement from the proposed regulation.

### 4. Subsection 2.6.b.: Debottlenecking De Minimus Activities

The proposed provision governing de minimus emissions requires those Tier I and Tier II activities which "amend or change (e.g., debottleneck) a process operation" to be used in determining whether the aggregate of all upstream and downstream emissions trigger the modification or construction permitting thresholds. We are concerned that the term "debottleneck" is not further defined. In any event, and particularly in light of the restrictive manner in which Tier I and Tier II de minimus activities are defined, it is unclear how often this provision would apply.

## 5. Subsections 2.20.c and 2.20.f: Definition of Regulated Pollutants

This proposed provision adds to the list of "regulated pollutants" any air pollutant that is subject to a New Source Performance Standard ("NSPS") promulgated under § 111 of the Clean Air Act or subject to a National Emission Standard for Hazardous Air Pollutant ("NESHAP") promulgated under § 112 of the Clean Air Act. Presumably (consistent with EPA rules and policies), the OAQ only intends to treat a pollutant as "regulated" for the source categories specified in the NSPS or NESHAPs for that pollutant. It would be helpful if the proposed subsections included language to clarify this issue.

## 6. Section 4: Administrative Updates

Although we strongly support and appreciate the OAQ's willingness to eliminate unnecessary delays associated with minor, insignificant permit changes, we believe the proposed procedures for making administrative updates as set forth in Section 4 can be greatly simplified. A source owner should be able to make such changes quickly and easily, with minimum bureaucracy. Instead, this section sets forth a procedure worthy of a flow diagram. Where the OAQ determines that a proposed change does not trigger permitting requirements, the agency should retain broad discretion to approve of such without the need for consulting a checklist of permissible changes and/or requiring advance public notice.

Moreover, subsection 4.1.1a., allowing the Director to deny an administrative update, should be deleted. There should be no option for the Director to deny a change fitting within any of the categories in section 4.2 on any grounds other than that the requested change constitutes a modification. (Similarly, section 4.1.b. should be simplified to allow denial only where a finding is made that the change constitutes a modification.) Further, to preserve the rights of a permittee, all denials should be subject to appeal, contrary to the proposed subsection 4.1.c.

The public notice and "permit application fee" for Class II administrative updates are also especially burdensome. Essentially, Sections 4.1.d and 4.4 require the permittee to provide 15 days' notice to the public via legal advertisement and pay a $300 "permit application fee" upon requesting the update from the Director. These updates, by definition, are minor changes which merely reflect source changes which cannot involve significant changes in emissions. The public notice requirement and imposition of a $300 fee for a mere administrative change are unduly burdensome and prohibitory.

## 7. Subsections 5.1 - 5.3: Pre-Permit Activities

We applaud the agency for attempting to clarify which activities may be undertaken at a site prior to issuance of a Regulation 13 permit, as set forth in proposed subsection 5.1. We offer two suggestions which we believe will improve these provisions.

First, although it is implied by proposed subsection 5.2 and is arguably permissible under present law, we urge the OAQ to add to the list of permissible pre-permit activities the delivery of materials to a site, including equipment which is mass manufactured or arrives prefabricated. As long as the actual installation remains prohibited, and the operator is not allowed to make any changes to the delivered components to render them operable, such an addition to the list should present no concern to the agency. Again, we believe this is generally permissible under EPA's New Source Review program governing major sources, and there is no reason that it should not be acceptable under West Virginia's minor source program.

Second, subsection 5.3 should clarify that a permittee will not be subject to penalties for actually undertaking the listed activities in good faith before obtaining a permit. It is our understanding that the intent of this provision is to prevent facility owners/operators from relying on the fact that they conducted subsection 5.1 activities or made investments in connection therewith. as a basis for asserting that they are equitably entitled to a permit. We have no objection to this, but it appears the language in this provision needs to be tightened to eliminate the possibility of interpreting it in such a way that a facility owner/operator may still be subject to penalties for conducting such activities in good faith before there was any reason to believe that a permit would be required.

## 8. Section 8.3: Public Review Procedures - Administrative Updates/Temporary Permits

Administrative updates and temporary permits are by their nature, minor and impermanent, and are intended to provide some relief from otherwise unwieldy requirements. Requiring public notice for these minor actions is counter-intuitive and will only serve to delay such relief. There is no need for the public to be involved in the issuance of an administrative update to a permit or a temporary permit. The proper point for public participation is at the point when a new or amended permit will be issued, since it is only beyond that point that a member of the public may be significantly affected.

* * * *

KRT appreciates having the opportunity to present these comments. We recognize that the agency has made a substantial commitment of resources in reviewing and proposing changes aimed at improving Regulation 13 permitting, and we thank you for recognizing the deficiencies and for attempting to address several long-standing concerns.

With the additional changes identified above, we believe the Regulation 13 permitting process would be considerably improved without sacrificing the agency's role in implementing a program for the comprehensive management of air quality in West Virginia.

Thank you for your consideration of these matters.

Sincerely,

Christopher B. Power

Christopher B. Power
Counsel, Kanawha River Terminals, Inc.

bc: Fred Verardi
Mike Gatens

Tammy
Karen –
Bev McKeone

Karen

# West Virginia Mining & Reclamation Association

1624 Kanawha Boulevard, East
(304) 346-5318

Charleston, West Virginia 25311
FAX 346-5310

OFFICE OF AIR QUALITY
1999 OCT 12 P 3:53
RECEIVED

Edward L. Kropp, Chief
Office of Air Quality
West Virginia Division of Environmental Protection
1558 Washington St., East
Charleston, WV 25311

October 12, 1999

Dear Mr. Kropp,

I am writing in regard to 45 CSR 13, "Permits for Construction, Modification, Relocation and Operationof Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits and Procedures for Evaluation."

First, let me add our endorsement of the stakeholder process which is culminating in these regulations.

Secondly, we have reviewed the draft comments of the West Virginia Chamber of Commerce, as expressed by David Flannery. Mr. Flannery has periodically reviewed with our staff the progress of the regulatory development process. At this time, we enthusiastically endorse the views and comments of Mr. Flannery and the West Virginia Chamber of Commerce.

Thank you for the opportunity to submit comments.

Sincerely,

Dan Miller

Dan Miller
Vice President

# League of Women Voters of West Virginia

Deirdra L. Halley, Legislative Director
302 Woodbridge Drive
Charleston, WV 25311


---

Edward L Kropp, Chief
Office of Air Quality
1558 Washington St. East
Charleston, WV 25311-2599

October 12, 1999

Dear Sir,

The League of Women Voters of West Virginia wishes to thank your Division and staff for all of their kind help and encouragement during the recent revision of some of OAQ's legislative rules. We support the final work product of the stakeholders group and look forward to future involvement in the Division of Environmental Protection's rules revision groups

The League recognizes the need to encourage continued economic development in our state while regulating to maintain high clean air standards We will make every effort in the upcoming legislative session to express our support of your agency in its efforts to safeguard the health of all West Virginians We strongly believe that the revisions proposed for the 2000 session represent an improvement of the existing rules.

The League plans to stand behind our agreement to support passage of your proposals as long as no substitutive changes are made by any of the other members of the stakeholders group If such changes are made we will be forced to reevaluate our posture and will act accordingly

The League still has grave concerns about the preconstruction and presiting aspects of reg 13, we feel that an equity argument will still be made in cases where a final permit is denied and as you know these arguments often succeed in West Virginia courts We would also like to see more modeling be done as a mandatory part of the permitting process however, we will support the compromise proposal submitted for these legislative rules The League thanks your agency for allowing us to be a part of this process and we look forward to future projects with DEP.

Sincerely,

Deirdra L Halley

Deirdra L Halley
Legislative Director, LWVWV

W/ Barbara

THE LEAGUE
OF WOMEN VOTERS®
OF THE UNITED STATES



June 28, 1999

Ellender M. Stanchina, President
The League of Women Voters of West Virginia
2023 Huber Road
Charleston, WV 52314-2279

Dear Ellender:

As you requested, I am here sending you the positions of the League of Women Voters of the United States related to environmental protection and clean air.

**Environmental Protection and Pollution Control**

The League of Women Voters supports the preservation of the physical, chemical and biological integrity of the ecosystem and maximum protection of public health and the environment. The League approach to environmental protection and pollution control is one of problem solving. The interrelationships of air, water and land resources should recognized in designing environmental safeguards. The League's environmental protection and anti-pollution goals aim to prevent ecological degradation and to reduce and control pollutants before they go down the sewer, up the chimney or into the landfill.

The League believes that although environmental protection and pollution control are responsibilities shared by all levels of government, it is essential that the federal government provide leadership and technical and financial assistance.

The federal government should have the major role in setting standards for environmental protection and pollution control. Other levels of government should have the right to set more stringent standards. Enforcement should be carried out at the lower levels of government, but the federal government should enforce standards if other levels of government do not meet this responsibility. Standards must be enforced in a timely, consistent and equitable manner for all violators in all segments of society, including governmental units, industry, business and individuals.

Environmental protection and pollution control, including waste management, should be considered a cost of providing a product or service. Consumers, taxpayers and ratepayers must expect to pay some of the costs.

1730 M STREET, NW, SUITE 1000 WASHINGTON, DC 20036-4508
202-429-1965 Fax 202-429-0854
Internet http://www.lwv.org E-mail lwv@lwv.org

The League supports policies that accelerate pollution control, including federal financial assistance for state and local programs.

The League supports:

- regulation of pollution sources by control and penalties;
- inspection and monitoring; full disclosure of pollution data;
- incentives to accelerate pollution control;
- vigorous enforcement mechanisms, including sanctions for states and localities that do not comply with federal standards and substantial fines for noncompliance.

**Air Quality**

The League supports:

- measures to reduce vehicular pollution, including inspection and maintenance of emission controls, changes in engine design and fuel types and development of more energy efficient transportation systems;
- regulation and reduction of pollution from stationary sources;
- regulation and reduction of ambient toxic air pollutants;
- measures to reduce transboundary air pollutants, such as ozone and those that cause acid rain.

I trust that this will meet your needs. If you have any questions or additional requests, please don't hesitate to contact the national office.

Sincerely,

Carolyn Jefferson-Jenkins

Carolyn Jefferson-Jenkins, Ph.D.
President

Tammy
Karen
Bev- Reg 13 only -

Bev
McKeone
Stephanie

Edward L. Kropp, Chief
Office of Air Quality
W. V. Division of
Environmental Protection
1558 Washington St. E
Charleston, WV 25311-2599

W. V. DIV. OF ENVIR. PROTECT.
OFFICE OF AIR QUALITY

1999 OCT 12 A 11:42

RECEIVED

October 11,1999

Mr. Kropp:

I wish to submit written comments on the September 7,1999 Office of Air Quality proposed Legislative rule changes to Title 45CSR-13. Comments accepted until October 12,1999 I respectfully request a reply to these comments if possible.

I'm also resubmitting my comments of July 25,1999, on the proposed Legislative rules changes to Title 45CSR-1,45CSR-5 and 45CSR-16. Wherefrom, 45CSR-1 is repealed and incorporated into 45CSR-5 All these 45CSR's proposed rules changes applies to a corporation or (surface) business entity (owner,operator or both) for the operation of a coal preparation plant and a coal handling operation and associated facility(ies) of a coal refuse disposal area.

The purpose of 45CSR-13 proposed rule changes is to set forth procedures for stationary source reporting, a criteria for a corporation or business entity to obtain a permit to construct and operate a new stationary source; to administrative update a existing permits (R-13), temporary permit or a general permit (G10-A or 9).

I'm submitting these comments as a person with a valid legal interest, Who filed a Notice of Appeal (particular grounds for a appeal). A person who signed a August 4,1999 entered Consent Order on Air Quality Board Appeal 98-02-AQB, Environmental Board, Bureau of Environment.

A appeal on the Director's authorized representative, Chief, Office of Air Quality, Division of Environmental Protection decision to approved a 45CSR-13-2162 permit. Therein, a transferral of R-5 and R-13 permits to another corporation or business entity. This R-13-2162 permit supersede and replace prior owner, operator R-13's permits.

A Consent Order, Wherefrom, no party make any admission of law of fact or waive any rights with regard to any pending or future permit appeal to any appeal board

The proposed rule changes for 45CSR-13-1. General 1.1 Scope has strike-out the sentence, which has not been issued a permit pursuant to 45CSR30. Does that mean R-13's permits are no longer subject to 45CSR30 (Title V.), requirements for operating permit. Therein, 45-30-5 permit content, 5.1, standard permit requirements, (f). 0.

Property rights. The permit does not convey any property rights of any sort, nor any exclusive privilege.

Within the Briefing Document for the proposed rule changes to 45CSR-13, Section E, Constitutional Takings Determination states, in accordance with (1994, WV Code, Volume 8A Chapter) 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.

How did the chief executive office of a state administrative agency determined that this proposed rule change would not result in the taking of a person's Constitutional rights within Private Real Property.

Will the proposed rule changes to 45CSR-13 affect the August 4,1998 entered Consent Order on Appeal 98-02-AQB

Since a Constitutional Takings Determination statement is now being provided within 45CSR-13. Does this mean that property rights can now be conveyed within Office of Air Quality permitting procedures for any 45CSR's permit, new, modified or amended and/or a issued General Permit, G10-A or B.

I believe that the agency's chief executive officer, Constitutional Takings Determination statement (E) itself is a taking of Constitutional rights.

Tom O Jarrell

Tom O Jarrell
Bandy Green Branch
HC 60 Box 26A
Gordon, WV 25093
245-6465

Tammy
Karen
Bev McKeone

Karen



# Comments of the *WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION* and the *INDEPENDENT OIL & GAS ASSOCIATION* regarding 45 C.S.R. 13

## I. INTRODUCTION

The West Virginia Oil and Natural Gas Association (WVONGA) is one of the oldest trade associations in West Virginia, serving the entire oil and natural gas industry. WVONGA members are engaged in exploration, production, transmission, storage, sales and distribution, while its allied members and associate members are involved in numerous supporting businesses. WVONGA members operate in virtually every county in West Virginia, employing thousands of people across the state. WVONGA is a recognized leader on state legislative issues, regulatory affairs and environmental matters and is involved in a broad range of economic, environmental, legal and regulatory issues.

Formed in 1959, the Independent Oil & Gas Association (IOGA) is a state-wide nonprofit trade association representing companies engaged in the extraction and production of natural gas and oil in West Virginia, and the companies and individuals which support extraction activities. IOGA was formed to promote and protect a strong, competitive and capable independent natural gas and oil producing industry in West Virginia. IOGA has more than 350 corporate members who are active in West Virginia and in 34 other oil producing states. One of the largest natural gas producers in the United States, West Virginia exports about half of the natural gas produced within its boundaries.

WVONGA and IOGA have a history of engaging in a constructive dialogue with the Office of Air Quality (OAQ) on issues of importance to the oil and gas industry. Both organizations participated in the development of a general air permit for compressor engines, and were represented at the stakeholder meetings discussing changes to 45 C.S.R. 13 (Regulation 13). Many issues of importance to the industry were raised at those meetings, and therefore we offer these comments in an attempt to develop a workable permit program that eases permitting burdens and reduces the time for permit issuance.

## II. COMMENTS

### *De minimus Sources*

We compliment the OAQ on the development of a de minimis source list and believe that it is a concept that holds potential advantages for the regulated community. Several of the Tier I categories, such as numbers 34, 38, 41 and 59, could be very useful to the oil and gas industry. However, while the *de minimus* categories may be helpful, the requirements associated with the Tier II sources, particularly the requirements for aggregating emissions and record keeping, are unnecessarily complex. We suggest that the OAQ eliminate the requirements for aggregating emissions and record keeping, and combine the *de minimus* categories into a single list of sources that are so small that they need not be considered for purposes of Regulation 13. This would reduce the *de minimus* list to its simplest, and most useful, form.

If the OAQ intends to keep the proposed de minimus approach, we ask the OAQ to clarify that the Tier II activities need only be tracked and aggregated if the owner/operator intends to avoid permitting on the basis of the *de minimus* exception. As presently written, all increases that are described in categories 5 and 6 of Tier II would be subject to record keeping. We do not believe that is what the OAQ intends. Many operators will prefer to file a permit determination notification in accordance with proposed Section 5.13 rather than keep track of, and aggregate, Tier II increases. The OAQ could help those operators by limiting the aggregation requirement to those *de minimus* increases that are not the subject of a permit determination notification or an administrative update.

***Definition of Modification.***

We approve of the increase of the emission threshold to 6 pounds per hour in Section 2.17.a, but we urge the OAQ to increase the other modification level from 5 tons per year to 10 tons per year. Any facility that calculates potential to emit on a year round basis (8,760 hours per year), as sources in the oil and gas industry do for compressor engines, dehy units, and similar emissions units, would exceed 5 tons per year if hourly emissions are 1.2 pounds. Therefore, increasing the 5 ton per year threshold to 10 tons will still limit hourly emissions to less than 2.4 pounds per hour, which is only slightly more than the 2 pounds per hour the OAQ currently allows.

The advantage of raising the threshold, which is accomplished without any corresponding harm to the environment, is to relieve operators of the necessity of filing an application for small changes, and waiting to receive permits. It would allow an increase in the number of compressor engines that could be sited without a permit. These changes reduce the costs of doing business in West Virginia, and have a positive effect on the oil and gas industry, and consequently the state's economy.

***Determining Emission Changes for Compressor Engines.***

We appreciate the OAQ's attempt to accommodate the oil and gas industry by specifying in Section 2.17.f.6 a means by which potential to emit for grandfathered compressor engines could be determined. However, it is our belief, based on past practice, that under the current version of

Regulation 13 changes in emissions at grandfathered units are determined by comparing current potential to emit against future potential to emit, and that addition of one emissions unit, such as a compressor engine, can be netted against the removal of a similar (but not necessarily identical) replacement engine. Consequently, we do not see how Section 2.17.f.6 represents an improvement over the current rule. We would urge the OAQ to develop an interpretive rule explaining how, under the current rule, this type of replacement of one compressor engine for another can be accomplished without a permit, by comparing current potential to emit against future potential to emit, and by calculating the future potential to emit by netting out the permanent removal of the existing engine. This sort of common sense approach to permitting would greatly reduce permitting burdens, while not reducing in any way protection of the State's environment.

***Use of Catalytic Converters.***

The oil and gas industry thanks the OAQ for its willingness to allow calculation of potential to emit after interlocked catalytic controls are taken into account. The five year time period for replacement of catalyst is short, though, as engines may run sporadically during that five year period, and catalyst changes may not be necessary. We urge the OAQ to adopt 45,000 hours of operation as the time for change of catalyst. The OAQ might also allow other means of determining that the catalytic converter is working, which would introduce additional flexibility. The result would be several options that an operator could choose from. If an operator did not want to keep track of the hours of operation, the operator could assume constant operation and replace the catalyst every five years. If the operator wanted to keep track of the hours, because the engine was running sporadically, he could do so, and change the catalyst every 45,000 hours. If the owner wanted to propose an alternative means of verifying the catalyst's effectiveness, such as temperature monitoring, that could be done as well, with the Chief's approval.

To make these changes possible, we propose that the final sentence in Section 2.19 read **"The catalytic converter shall have catalyst replaced after every 45,000 hours of operation, as established by records kept by the operator, unless the Director agrees to an alternative method of verifying catalyst effectiveness."**

***Stationary Source.***

The OAQ has proposed adding a new threshold for determining whether an emissions unit is a stationary source. In addition to the current threshold of 6 pounds per hour, the OAQ is proposing adding a threshold of 5 tons per year. As discussed in the comments regarding modification, a 5 ton per year limit on any source operating 24 hours a day, 365 days a year effectively limits the emissions that are allowed without a permit to 1.2 pounds per hour. This is an extremely low level and will require permitting many more sources that are currently permitted. We urge the OAQ to delete the 5 ton per year threshold.

The new thresholds for hazardous air pollutants (HAPs) should also be deleted. HAPs that are not toxic air pollutants regulated under 45 C.S.R. 27 or volatile organic compounds should only be regulated in voluntary permits, to create synthetic minor sources, or where controls required by 45 C.S.R. 34 are imposed. This is discussed more fully later in these comments.

We applaud the OAQ's willingness to remove the current provision in Section 2.24, which provides that an emissions unit "subject to any emissions control rule promulgated by the Director" is a stationary source and therefore must have a permit. This phrase was subject to several different interpretations and was a constant source of confusion. Removing it allows the oil and gas industry to have a better understanding of the permit process without sacrificing any protection for the environment.

*Administrative Updates.*

Section 4.1 of the administrative update section states that updates may only be obtained "upon the request of the permittee, or with the permittee's consent. . . ." Section 4.1.e states that "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 administrative update. . .", which suggests that the Director can impose changes or unilaterally amend the permittee's application. We believe the OAQ should confirm that all administrative updates are voluntary and that, when increased emissions are the reason one might seek administrative update, permittees still have the option to give notice of the change in accordance with proposed Section 5.13 and immediately proceed with the project causing the increase in emissions, as long as those emissions do not constitute a modification. This could be done by deleting Section 4.1.e, and we recommend that be done. The OAQ might also take advantage of this change to confirm that one may emit in excess of one's permit limit, as long as the increase does not constitute a modification and either an administrative update is obtained or notice is provided in accordance with proposed Section 5.13.

For those who choose to get administrative updates, there is no right to appeal the denial of an administrative update request. (See Section 4.1c.) It appears that the Director is trying to be even-handed by not allowing public notice or comment on the denial at the same time he is not allowing an appeal of that denial. However, at least with regard to Class II administrative updates, a public notice period will already have been allowed (see Section 4.1.d) before the denial is issued.

Furthermore, *W.Va. Code* §22-5-14 provides for an appeal by anyone whose "interest may be affected. . .by a permit issued, modified or denied. . .", a phrase which is expansive enough to allow for appeal of a denial of a permit amendment request. We suggest deletion of the second sentence in Section 4.1.c

*Activities Taking Place for Before Construction Commences.*

The clarification of what can be done without a permit is very helpful. We suggest that the OAQ add to the list of acceptable activities the following as Section 5.1.i: **"Deliver materials and equipment on site."** This would allow delivery of a compressor engine or dehy unit to a site without allowing it to be hooked up or ready to operate. There is really no reason that a compressor that is scheduled for installation at one location should be staged at a different site when it could be delivered to the place where it will be used. Delivery is done at the owner or operator's own risk, according to Section 5.3, and the unit's presence at the work site presents no greater equitable argument that permit should be issued than it would at a receiving yard many miles away.

*Determination of Compliance.*

It is our belief that the OAQ intended to require immediate steps to come into compliance if someone failed a stack test, with those remedial steps to be approved by the Director. As written, however, Section 6.3 requires that the source always reduce throughput capacity or added enhanced control devices. We believe the OAQ meant to require immediate remedial steps approved by the Director, steps which **might** include, but are not limited to, reduction in through-put capacity or additional control devices. We suggest that section be rewritten accordingly.

*Public Notice Requirements.*

We note that the public notice requirements of Section 8 have changed significantly from those required by current Regulation 13. In some respects, this appears to be favorable, as the two 30-day periods have been combined to a single 45-day period, which should run concurrently with the Title V review period. We believe that this change in the public notice provisions should not impose additional delay on registration for the compressor station general permit, but seek confirmation of that fact.

We would request additional clarification regarding Notice Level B. It is not clear whether the Class 1 legal advertisement is placed in the newspaper after the general permit registration application has been reviewed and approved by the OAQ, or whether it is done preliminary to review. We believe that it should be published as soon as the applicant has filed the permit application, and we request confirmation of that fact.

*General Permit Fees.*

Permit application fees of $1,000.00 may be appropriate when one is dealing with large, complex sources, but most permitting issues at oil and gas facilities are very straight-forward. This is especially true of the very circumscribed situations in which general permit changes are made. Therefore, we suggest that Section 12 be changed to require a fee of no greater than $300.00 for a modification of a general permit. That change could then be reflected in the general permit for compressor engine stations.

***Regulation of Hazardous Air Pollutants***

There was much discussion during the stakeholder process about regulation of hazardous air pollutants (HAPs) in Regulation 13 permits. We believe that Regulation 13 permits should limit criteria pollutants and not HAPs (other than HAPs that are 45 C.S.R. 27 toxic air pollutants, or are volatile organic compounds), except in certain specific instances. One situation would be if an owner or operator wants to receive a voluntary permit for HAPs, to create a synthetic minor source and avoid Title V permitting. Another situation where HAP limits would be appropriate would be if the OAQ was imposing case-by-case MACT limits. To require HAPs limits in other situations would be to interfere with the federal system of regulating HAPs, which was intended to be accomplished through control devices, not ambient air standards. Such action would run counter to the prohibition against adoption of regulations that are more stringent than federal regulations.

## III. CONCLUSION

WVONGA and IOGA appreciate this opportunity to comment on Regulation 13. The rule has a significant effect on the oil and gas industry, and we hope that careful consideration will be given to the comments. We also hope that changes to the rule will be reflected in the general permit for compressor engine stations, making it an improved general permit.

Raymond I. Joseph
Executive Director
**West Virginia Oil and Natural Gas Association**

Michael D. Herron
Executive Director
**Independent Oil & Gas Association**

October 12, 1999

American Electric Power
1 Riverside Plaza
Columbus, OH 43215 2373
614 223 1000

Tammy
Karen —
Bev McKeone

Karen



AMERICAN ELECTRIC POWER

October 11, 1999

Mr. Edward L. Kropp, Chief
Office of Air Quality
West Virginia Dept. of Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25311-2599

**RE: Comments on Proposed Revisions to 45CSR13**

Dear Mr. Kropp:

On behalf of the American Electric Power (AEP), comments are being submitted regarding proposed revisions by the Office of Air Quality to 45CSR13. Before addressing specific comments, AEP would like to thank the OAQ for the opportunity to participate in the stakeholder process and to provide comments on the proposed revision.

The nature of Regulation 13 and the participation of various interest groups in the stakeholder process have made revising the regulation a challenge. Although the process was often slowed, many times this was due to the need to necessarily educate the stakeholder group and due to philosophical differences between interest groups. However, the leadership of the OAQ moved the group forward in developing the current revision. The following comments are offered to further revise the proposal in a direction that not only protects and enhances air quality in a manner that is consistent with State and Federal regulations and goals, but also allows for successful growth of industry in West Virginia.

**Section 2.1.c. - Amendment to definition of "Actual emissions."**

Under the current regulation if a source has not begun operation, the actual emissions of the unit are considered to be equal to the potential to emit of the unit. The proposal amends this definition by allowing the Director at his or her discretion to set actual emissions for this unit to be equal to the actual emissions of an existing source with similar operations. As there is no definition of "similar operations" in the rule nor is there any restriction on what the Director may consider in determining what constitutes such similarity the permittee is faced with little opportunity to challenge the Director's decision in such a case. For instance, the Director could decide that a unit that produces chemical product "A" using a specific process and like materials is a "similar operation" without taking into account that the new unit is intended to operate for a longer period of time or at a more rapid production rate than the one upon which the Director modeled the determination. AEP does not believe that this was discussed during the stakeholder process. To provide maximum flexibility and to protect the ability of the permittee to participate in permit decisions, AEP recommends that the phrase "with the permittee's consent" be added prior to the phrase "...or the actual emissions of an existing source..."

**Section 2.4. - Need for further modification of the definition of "Commenced."**

The current definition of commenced has been interpreted as establishing certain restrictions on the activities that may be undertaken prior to receiving a permit pursuant to 45 CSR 13. The language of this definition, however, appears to be directly related to proposed section 10.2 which deals with determining a cause for the purpose of permit suspension or revocation. The definition establishes the parameters to be consulted in order for a permittee to demonstrate that he or she has indeed commenced construction and that the permit should be allowed to remain in effect. The requirement that the construction must be "continuous" serves to reinforce this interpretation in that it precludes a permittee who has indefinitely put a project "on hold" from claiming that they have met the requirements of section 10.2 and thus are entitled to the continuance of the permit. By reading commenced as part of the pre-approval construction prohibition a party could construct on a "fits and starts" basis and claim that construction was not continuous and thus had not commenced. This should be amended by adding the phrase "... for the purpose of section 10.2..." after the initial word in the definition.

Note: the amended phrase in the proposed rule, "...unless otherwise specifically provided in this rule..." is added to the second sentence of the definition that specifically refers to what conditions are considered to be "interruptions." If this phrase is intended to reconcile the restrictions of this definition with the allowed activities listed in proposed section 5.1, the placement of the phrase may need to be moved to the end of the preceding sentence.

**Section 2.6 - New definition: "De minimis source."**

AEP supports the inclusion of this new concept into 45 CSR 13 and congratulates the OAQ on its introduction. We recommend that the sources listed in Table B and C be periodically reviewed and, when appropriate, amended as additional categories are identified that meet the criteria on which the current tables are based. If properly applied, the concept of de minimis source can greatly reduce the paperwork burden on both the regulated community and the OAQ staff while continuing to provide the public with a high level of environmental protection.

AEP asks OAQ to clarify that, for Tier II sources, the aggregation requirements apply to sources that are part of a single project and are not to be applied to unrelated projects. This was the sense of the discussion of the stakeholder group and it was confirmed several times that the aggregation requirement was restricted to emissions from single or closely related projects, not random projects by the same owner. It would also be appropriate for the OAQ to clarify when classes of emitted materials are aggregated as opposed to specified single materials, i.e. are criteria pollutants to be aggregated (e.g. CO + lead) or HAPs (e.g. HCl + propionaldehyde).

**Note on Tier I De minimis List (Table 45-13B).**

Item 13 refers to "Wood heaters, cookstoves, or fireplaces used for heating and/or cooking at residential or publicly-owned facilities." There was a discussion of this section during the stakeholder process and it was felt that this language could be interpreted as requiring camp fires or bonfires at church-owned or organization-owned (YMCA, Boy Scouts) facilities to be excluded from the definition as these facilities are neither residential nor publicly owned. The sense of the stakeholders group was that such activities should come under the de minimis classification. In fact, any privately owned campground could conceivably be excluded from this definition depending on the definition of residential. At a minimum this definition should be amended by substituting the word "recreational" for the term "privately owned."

**Section 2.17. - Definition of "Modification.**

AEP agrees with the OAQ and the stakeholders in the incorporation of the 6 pph trigger for determining when a modification is subject to permitting. AEP also agrees with the issue raised by regulated members of the stakeholders group that there are instances in which a source may only operate infrequently at this emission rate and will not exceed the 5 tons per year trigger. We urge the state to define this trigger as 6 pph **and** 5 tpy. This will effectively remove a substantial paperwork burden for OAQ and sources with short-term emissions.

We are aware of the OAQ staff opposition to this and propose as an alternative that a proposed permittee be allowed to request a variance to the permitting requirement if only one of the triggers is exceeded. This would not be a blanket exemption to either trigger level, but would only be granted for an emissions unit meeting certain criteria and approved by the Director. The Director could develop a policy or interpretative rule establishing the criteria to be considered. The quantities, types and location of the emissions unit are some of the parameters that could be used for this analysis.

**Section 2.18.b. - HAPs trigger in definition of "Modification."**

This section in the proposed rule establishes a separate permit trigger that applies only to HAPs and is lower than other materials. AEP cannot find an appropriate rational for this specific treatment of HAPs. There was considerable discussion in the stakeholder group that 45 CSR 13 is not used to establish new or additional (beyond MACT) controls on HAPs. HAPs are addressed under Section 112 of the Clean Air Act and regulated under NESHAP and MACT standards. It is our understanding that West Virginia does not contemplate blanket regulation of HAPs beyond the Clean Air Act and applicable regulations. Therefore having a specific trigger for HAPs does not serve as a method of "controlling" HAPs in a manner consistent with the NESHAP and MACT programs. AEP urges that this section be deleted.

**Section 2.19.b. - Example of pollution control device in definition of "Potential to emit."**

This section allows the Director to decide that potential to emit be determined after a control device if the device is shown to be "inherent to the emission unit." The section goes on to list "low $NO_X$ burners" as the sole example of "inherent to the emissions unit." A low $NO_X$ burner is not a control device in the normally used sense of the term. It is, in fact, the emissions unit itself, it can not be separated from the source of emissions because it is the source of emissions. AEP feels that using this as the example of "inherent to the emission unit" could be misinterpreted to exclude normal post production emissions control devices that would be appropriately included in this category. AEP suggests that the Director be allowed to determine PTE after the control device when it is demonstrated that either a mode of operation or legally enforceable requirements will not allow the operation of the unit without the device. A better example would of a control device being inherent to the operation would involved material handling systems that entail conveyors that are completely enclosed. Thus, the material cannot be transported without the control device present.

### Section 2.20. - Definition of "Regulated pollutant."

This proposed section significantly expands the definition of regulated pollutant when compared to the existing 45 CSR 13. The regulated community objected vigorously to this expansion during the stakeholder process and the proposed language should not be considered to be a "consensus" issue resulting from that process. We feel that if OAQ determines there is a need to expand this definition it should present justification for such an expansion, the benefit to be gained by the expansion, and the potential impact on the regulated community as it would do were the proposed amendment part of any new restriction to be placed on the regulated community under normal regulatory development.

Most problematic of the changes is the apparent meaning of subsection 2.20.f. which includes any material for which a standard pursuant to section 112 of the Clean Air Act has been promulgated under the definition of "regulated pollutant." This has the effect of implementing the concept that once a MACT standard is promulgated for a single source category it becomes a regulated pollutant for all emission sources (whether it is included in a "source category" or not). The OAQ will remember that specific language in the July 27 draft of this proposal establishing this concept was strongly contested by the regulated community and eventually dropped from the proposal. This section has the same effect as the original draft. The concept of regulating HAPs based solely on 45 CSR 13 has been discussed a number of times (see comments under section 2.18.b. above) and it is the conclusion of the regulated community that such regulation is neither appropriate nor yields any benefit. AEP strongly recommends that section 2.20. of the proposed regulation remain unchanged from section 2.21. of current 45 CSR 13.

### Section 2.24.a. - New trigger in definition of "Stationary source."

Under current 45 CSR 13, a "stationary source" is a source, which emits in excess of 6 pounds per hour of a regulated pollutant. While the reasons for this particular trigger level are not clear, the definition has been the basis for applicability of 45 CSR 13 for some time. The number of sources that fall below this criteria are not known because, logically, such sources have been able to clearly decide that application for a permit is not required. The proposed section expands coverage of 45 CSR 13 by adding the "or 5 tons per year" caveat to the definition. While this does reconcile the definition of "stationary source" with the "modification" definition it ignores the fact that modification deals only with sources already regulated under 45 CSR 13 and thus applies to permittees for which applicability is already established. The proposed change will subject previously unregulated sources to the 45CSR13 permitting program. OAQ has provided no justification that such extension of regulatory coverage is in the public interest and has offered no analysis regarding the regulatory burden this will cause the business community or the resource demand this will add to the Agency. It is also unclear whether the new requirement applies retroactively to existing sources constructed since the effective date of the original regulation but previously excluded from applicability. Will these sources now be subject to liability for not having a permit, or will they be required to now file applications to obtain a permit? At a minimum, language should be added to clairify that sources in existance prior to the date of this revision are not subject to the requirements. In the absence of answers to these questions, an assessment of resource demands, the determination of new regulatory burden, and a clear demonstration of increased protection to the public, AEP recommends that the definition of "stationary source" currently found at 45 CSR 13-2.25. be retained until such information is available.

**Section 2.24.b. - New HAPs trigger in definition of "Stationary source."**

This issue is the same as discussed above regarding the definition of "Modification."

**Section 2.24.e. - Specification of permit revocation for low operation status in definition of "Stationary Source."**

First, AEP feels that this restriction is improperly placed in the definition of "stationary source" and could be missed by a permittee. This restriction, if allowed to remain in the rule, should be placed in section 10: "Permit Transfer, Suspension, Revocation and Responsibility." The section deals not with the definition of "stationary source" but with an independent action by which the Director may revoke an otherwise valid permit.

Second, AEP has been unable to see why this new reason for revocation in any way enhances the public welfare or reduces a burden on the regulated community. As currently written, this proposal puts an additional documentation burden on low use or emergency use units such as standby generators. In fact, the requirement penalizes a permittee for not emitting pollutants in a higher quantity. We do not believe that this is the intent of this section but it is the effect of it. If the OAQ's intent is to prevent the restart of long unused units that are still covered by a permit perhaps some modification of this section could yield the desired result without having to add to the paperwork burden of legitimate low use emission units. Rather than require permittees to file additional documentation with the Agency to justify low or periodic use of an otherwise legitimately permitted unit the Agency could set a no-use time limit or a lower per year emission threshold.

AEP suggests that, pending a demonstration by the agency that this section enhances the public welfare or reduces the regulatory burden, this section should be deleted. If not deleted, it should be substantially modified to allow low use emission units to continue to operate without additional paperwork burden.

**Section 4. - Administrative Updates to Existing Permits.**

AEP applauds the OAQ for the development of this concept. The rapid and uncomplicated correction and amendment of existing permits in matters of little or no impact on the public welfare is a process recognized in numerous other permit programs and was much needed in 45 CSR 13. AEP suggests that the OAQ consider amending the 60 day time period for the processing of these changes as there appears to be no situation covered by this process that would require significant resource commitment by the OAQ staff to implement. Perhaps, as an alternative, the time frame could be amended to set a shorter time frame for the issuance of an update unless in the opinion of the Director a longer time frame was needed. In these cases, the Director should still respond to the permittee in writing to explain why a longer time frame is needed and to negotiate an appropriate time for issuing the update.

AEP also suggests that any request for an administrative update by a permittee be allowed to be implemented immediately at the permittee's risk. AEP is aware that the West Virginia Chamber of Commerce has submitted language that clearly sets out the permittee's responsibilities and liabilities and we support the incorporation of this into section 4. of the proposed rule.

**Section 5.1.a-h. - Clarification of activities not constituting "construction."**

AEP compliments OAQ on the adoption of this set of subsections. These amendments significantly clarify the actions allowed and could result in substantial improvement in construction scheduling and implementation.

**Section 5.11. - Setting of permit restrictions based on "other documented relevant information."**

This section lists the types of restrictions that the Director may impose on a permittee and explains how these limitations are to be derived. Included within this section is the authorization for the Director to develop restrictions to be placed within a permit that are not based on any other rule to which the permittee may be subject. The restriction placed on this power is that the Director must make this determination based on information contained in the permit application or with the agreement of the permittee to develop other appropriate restrictions. By placing the phrase "...and other documented relevant ...information" in the section ahead of the language calling for the agreement of the applicant, the authority of the Director to incorporate any condition based on any information that he or she considers to be relevant is established. This is a significant increase in the authority of the Director and presents a very significant problem. There will no doubt be considerable differences of opinion between the Director and applicants in determining the scope of the term "relevant." It also has the effect of fundamentally changing the nature of 45 CSR 13 from a rule providing permit, the purpose of which is to implement requirements that are lawfully established in other OAQ regulations, to a rule that can be used to independently set new standards and requirements.

AEP strongly opposes this modification and recommends that the language of current 45 CSR 13-4.9 be retained.

**Section 5.12. - Restrictions of general permits to facility-wide application.**

AEP does not understand the OAQ's insistence that general permits are by their nature facility-wide. The response to a previous comment on this point simply states that air permits are different from water permits (a program that relies more and more on general permits) does not clarify the reasoning. For instance a large facility that has a plant-wide NPDES permit can handle storm water from a construction project without modifying the plant-wide permit by filing a notification indicating coverage under the approved general permit. Modification of the plant-wide permit would be needlessly time and resource consuming in light of the availability of the general permit. In like manner, were the State to develop a general permit for small temporary-use portable generators, it would be equally wasteful to amend the plants air permit if simple coverage under the general permit would ensure appropriate operation.

AEP strongly recommends that the word "facility-wide" be deleted from the proposal.

**5.13 Permit Determination Notification**

One of the most burdensome sections of Regulation 13 that adds questionable value to the process is Section 5.13 of the proposed rule. This Section provides that even though an operator is not changing an operation in a way that would trigger a permitting requirement, there is still a mandatory obligation to notify the Director of that change.

We are not aware of any other regulation that defines when a permit is required, but also requires a notification be made to a regulatory agency to confirm a determination by a source that a permit is not necessary. The practical effect of this requirement is the creation of needless expenditures of significant amounts of resources on the part of both the Agency and the regulated community in what has become virtually a full-blown permitting process simply to show that no permit is needed.

Sound public policy dictates that the Agency specify clearly and precisely when an operator is obligated to obtain a permit and place the responsibility on the operator to make application if and when those permitting requirements are triggered. There should be no obligation placed on an operator to make a filing with the Agency to prove that no permit is required. This is of particular concern when such a filing is required to be so extensive that it mimics a permit application.

AEP urges that the mechanism set forth in proposed Section 5.13 be deleted or utilized instead as an optional regulatory rule available to the permittee to address the situation where the regulatory requirements are not sufficiently clear to allow the permittee to determine with sufficient certainty whether a permitting requirement is triggered. In addition, such an optional mechanism should be available to the permittee who might want to seek voluntary restrictions or limitations on the manner in which a change might take place, so as to be certain not to trigger any permitting obligations. Otherwise, there is no basis for retaining this provision in Regulation 13 and it should be deleted.

The proposed Section 5.13 should be revised to convert it to an optional regulatory mechanism and allow the provision to be used to seek voluntary restrictions on operations. The new Section 5.13 should be divided into two subsections. The first would related to a source proposing the use of operational restrictions in order to remain below general permitting limits that is seeking a voluntary permit. The second would apply to a source looking for confirmation from OAQ that a permit is not needed in which case there would be no binding restrictions if the OAQ confirms that a permit is not needed for such a source.

## Section 6.3. - Required action upon failing a stack test.

This is a new requirement added to the regulation without discussion in the stakeholder group. AEP does not dispute the need for action to resolve the issue when any kind of indication exists that a permit requirement is not being met. AEP does object to the presumption that the failure of a stack test is automatically considered to result in a conclusion of permit violation (unless such a condition is clearly set out in the permit and the permittee's right to appeal the Director's course of action is equally clear). The Company also objects to the severe restrictions placed in the proposal on the course of action open to the permittee to resolve the action. The proposal as written requires that at a minimum the applicant must either reduce throughput or add additional pollution control devices. This is an extremely small universe of choices for addressing the situation and restricts both the Director and the permittee from pursuing more creative or less costly processes. It is also possible that this restriction is in conflict with Section 22-5-4.4 of the code, which prohibits the Director from requiring a "specific method of compliance" subject to certain limited exceptions.

AEP proposes that this section be redrafted to allow more reasonable latitude in addressing such situations.

## Section 15.1 Hazardous Air Pollutants

Currently the USEPA is implementing the hazardous air pollutants (HAPS) requirements set forth in Section 112 of the Clean Air Act by developing maximum available control technologies (MACT) for specific HAPs and source categories. USEPA is scheduled to complete these requirements by 11/13/2000. Once a MACT is completed by USEPA, OAQ can implement the requirements as part of the West Virginia regulations.

The proposed Section 15.1 of Regulation 13 goes beyond the scope of HAPs requirements set forth in the Clean Air Act by adding emission inventory and control requirements. As proposed, a source filing a PDF (regardless of whether or not a 45CSR13 permit is issued) would be required to submit an inventory of HAPs, even if HAPs are not the emission of concern in evaluating whether or not a permitting threshold will be exceeded. Mechanisms such as the emission inventory related to Title V and the Toxic Release Inventory (TRI) are currently in place to assess applicable annual HAP emissions.

By placing emission limits on HAPs that have not exceeded a permitting threshold a limit is being place on an emission that is still considered de minimis. Establishing an emission limit in this manner could result in a limit for a HAP that does not have an applicable MACT. The possibility also exists that the OAQ imposed HAP limit could be more stringent than that of an established MACT or future MACT. This contradicts the statutory requirement that exists in West Virginia laws that preclude the OAQ from establishing regulations that are more stringent than federal regulation without appropriate justification.

In addition, Section 112(n) of the Clean Air Act specifically exempts certain sources and source categories from HAPs regulation pending future studies by the USEPA. Among those sources referenced in Section 112(n). Electric utility steam generating units are not presently included in an applicable source category. As required by the Clean Air Act. USEPA recently completed a study of HAP emissions from electric utilities and concluded that electric utility HAP emissions were not linked to a discernable public health effect. The study did discuss the need to evaluate four HAPs in greater detail, but did not conclude that regulation was necessary. Thus, sources under 112(n) that are exempted from HAP regulation pending future studies and are not included in an applicable Section 112 source category list should also be exempted from the proposed Section 15 of Regulation 13 unless it is determined from the 112(n) study that a specific HAP should be regulated by a MACT. If and when USEPA concludes that electric utilities should be regulate for a particular HAP, then Regulation 13 should only apply to the HAP for which the MACT standard for that specific source category was promulgated. At that time, electric utilities should not become regulated for all HAPs because these will have been proven to be insignificant as a result of the 112(n) study.

AEP urges that Section 15.1 be deleted from the OAQ proposal and that Regulation 13 should not be revised to expand the scope of HAP regulation. If a provision is to be added to the existing Regulation 13 that is expanded over the current regulatory requirements, then the provision should be developed so as to minimize the extent to which the proposal exceeds the stringency of the federal requirements. The following represents proposed revisions to Section 15 that incorporates the aforementioned comments:

15.1. ~~For purposes of establishing an inventory of hazardous air pollutants, any person which makes an application for a permit as required by Section 5.1 or 11.2 of this rule, or files a notification as required by Section 5.13 of this rule, shall provide the Director with information regarding the nature and extent of any emissions of hazardous air pollutants.~~ Hazardous air pollutants shall be subject to limitations or controls under this rule only to the extent necessary to incorporate an applicable requirement based upon any rule of the Director promulgated pursuant to WVa. Code §§22-5-1 et seq, to implement Section 5.5 of this rule 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, facility may request a review of an existing permit received pursuant to this rule, when appropriate, the Director shall the MACT requirement into the permit. 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 (that are not listed in table 45-13A) 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.

AEP again appreciate the opportunity to participate in the stakeholder process and to comment on the proposed revision. We commend OAQ, DEP, and Governor Underwood for their leadership throughout the process.

Sincerely,

Jeff C. Lytle

Jeff C. Lytle
Air Quality Section

cc: F.E. Blake/G.J. Wooten/T.P. Mallan - AEP
D.W. Kemp - AEP

Tammy
Karen
Bev McKeon

Karen



# Comments of the *WEST VIRGINIA MANUFACTURERS ASSOCIATION* regarding 45 C.S.R. 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

### I. INTRODUCTION

The West Virginia Manufacturers Association (WVMA) is an organization dedicated to the advancement of industry in the State of West Virginia. It is composed of the makers of steel, paper, chemicals, machinery and other goods used in, and exported from, this state. All WVMA members are affected by environmental regulations in the course of their industrial activities, and almost every member operates pursuant to an air permit issued pursuant to 45 C.S.R. 13 (referred to herein as "Reg. 13").

We believe it is important to note that the Reg. 13 regulatory reform process was begun as a result of the concern by West Virginia industry that business opportunities for our state were being lost to other plant sites because air permitting was not being accomplished in a timely manner. Prompt issuance can make a difference between a company putting a plant or process in West Virginia rather than some other state. Business leaders communicated this message to the Administration in West Virginia, who pledged to undertake a process to evaluate West Virginia's regulations for unnecessary complication.

The WVMA believes that the resulting review and reconsideration of Reg. 13 that has been initiated by the Office of Air Quality (OAQ) presents a wonderful opportunity to improve the permitting process by limiting the time needed to acquire permits, and reducing the need for permits where environmental impacts are negligible. Permits, with their inherent delays, should be required only for those situations where the level of emissions is significant enough to warrant the greater scrutiny. To this end, the WVMA is advocating changes to Reg. 13 that will reduce permitting burdens for both the regulated community and the agency and will speed along the review process without sacrificing in any way the protections for human health and the environment that the OAQ's air regulations are meant to provide.

## II. COMMENTS

### A. Scope - Nonroad engines

It would be helpful if the OAQ would add language to the Scope section to state that nonroad engines are not regulated under Reg. 13. This would eliminate some confusion that has arisen with regard to the permitting of generators and other nonroad equipment that is not presently subject to Reg. 13. We suggest adding the following language to the Scope Section: *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 Director may regulate such sources pursuant to another rule drafted for that purpose.* This is language that has been reviewed and approved by the OAQ's counsel.

### B. Section 2.6 - *De Minimus* Sources

The concept of identifying "*de minimus* sources" and excluding them from regulation is an excellent one, and the WVMA applauds the OAQ for its willingness to consider the issue.

Nevertheless, we feel that Section 2.6 and Tables 45-13B and 45-13C make regulation of *de minimus* sources unnecessarily complex. This is particularly true with regard to the Tier II *de minimus* sources. As the rule is written, the requirement for keeping track of emissions from activities listed in Tier II (Table 45-13C) is required even if one is not attempting to claim that the Tier II activities are *de minimus* sources. Tier II lists two categories, numbers 5 and 6, that are emissions increases from nonspecific sources, meaning all small increases in emissions must be kept track of and recorded. There is no exception provided for those who do not want to take advantage of the *de minimus* levels and who choose to give notice of increases in accordance with Section 5.13[1] This will introduce unnecessary paperwork for manufacturers that may not wish to claim the *de minimus* exemptions. It also presents the anomalous situation that increases that are greater than *de minimus* but less than a modification threshold are not subject to record keeping or aggregation, but *de minimus* changes are.

A further problem is presented for those who want to take advantage of the Tier II *de minimus* exceptions, but are unsure how to go about aggregating, particularly for Tier II categories 5 and 6. Presumably all emissions adjustments contemporaneous with a change are considered, with reductions subtracted from increases, to get a net total increase. However, the OAQ has not specified a period in which to aggregate in this fashion - does one aggregate from the time the first *de minimus* increase occurs? For a two year period? Does the aggregation begin anew once the aggregated emissions rise to the level of a modification? Does one aggregate all criteria pollutants,

---

[1]For reasons expressed elsewhere in these comments, the WVMA will advocate the elimination of Section 5.13. For purposes of these comments, though, we will assume that it is part of Reg. 13.

or each pollutant separately? Does one aggregate all 188 toxic and hazardous air pollutants, or track them one-by-one? Does a small increase in emissions of a single HAP, concurrent with a large decrease in some other HAPs, trigger notification under Section 5.13? Resolving these questions will be necessary before the Tier II *de minimus* exceptions can be of any use.

The simplest way to remove these hurdles is to return to a simpler approach to *de minimus* sources, along the lines of the Title V program. WVMA urges the OAQ to designate all the *de minimus* sources as Tier I and to remove all requirements for aggregation and record keeping. Otherwise, the *de minimus* source designations, rather than resolving permitting problems, introduce a host of difficulties of their own, and do not serve to make Reg. 13 a more workable rule.

**C. Section 2.17 - Modification**

The WVMA appreciates the proposed increase in the hourly threshold in the modification definition from 2 pounds per hour to 6 pounds per hour for criteria pollutants and the addition of a threshold for toxic air pollutants. This will allow manufacturers and others to avoid permitting for very minor changes. However, the increase to 6 pounds per hour for criteria pollutants would not help any manufacturer that figures maximum design capacity, for purposes of calculating potential to emit, on 8760 hours of operation. For those sources, the limit will remain approximately 1.2 pounds per hour, because any greater emissions would trip the alternative 5 tons per year threshold in the definition of modification. Relief is needed from that 5 ton per year threshold to allow those manufacturers to receive any benefit from the increase to 6 pounds per hour.

We would also ask the OAQ to consider allowing emissions of greater than 6 pounds per hour of criteria pollutants when the total emissions would fall below 5 tons per year, or whatever alternative limitation the OAQ selects. This could be done by making it subject to the OAQ's discretion, allowing it to verify that the exception was needed and appropriate. For example, it would be useful in batch operations, where hourly emissions may surpass 6 pounds, but annual emissions may be very low. The following language, added at the conclusion of Section 2.17.b, would accomplish this: *"except that, upon petition of the owner or operator, the Director may authorize a greater hourly emissions increase without a permit, upon concluding that the annual emissions will be insignificant."*

With regard to hazardous air pollutants (HAPs), the WVMA believes that the modification thresholds of 2 pounds per hour and 5 tons per year should apply in limited situations, because HAPs should only be regulated in Reg. 13 permits in rare situations. This is discussed more fully in the comments pertaining to Section 15. It is sufficient to state here that modification thresholds for HAPs should become relevant only in those circumstances when a source has voluntarily sought a permit to become a synthetic minor source of HAPs. In that case, the modification thresholds are appropriate, because there is a need to review increases of HAPs to verify that emissions increases have not resulted in creation of a major source, but they should not be applicable to other situations.

To the extent the HAP modification thresholds are relevant, we would appreciate clarification that the modification threshold is determined by aggregating increases **and decreases** that are contemporaneous with the modification event. It is our understanding that individual HAP emissions can rise above the threshold, but a modification permit is not required unless the total increases and decreases of all HAPs affected by the change in operations exceed the 2 pounds per hour or 5 tons per year thresholds. We request confirmation of this understanding.

The WVMA is concerned about Section 2.17.f.6, which suggests that determining whether an increase in emissions has occurred requires evaluating current actual emissions against new potential emissions. While this is appropriate for major modification under major new source review (45 C.S.R. Series 14 and 19), we believe that it is more appropriate for purposes of minor permits to measure current potential to emit against future potential to emit for grandfathered units, and current allowable emissions against future potential to emit in the case of permitted units. Of course, any increase in potential to emit that does not rise to the level of a modification must still be reported in accordance with Section 5.13, to the extent that section is retained. We suggest that this be made the subject of an interpretive rule, as this is not a matter requiring a change of Reg. 13 and involves an interpretation of the current rule.

### D. Section 2.20.c and f - Definition of Regulated Pollutant

The definition of regulated air pollutant refers to pollutants regulated under New Source Performance Standards (Section 111 of the Clean Air Act) or HAPs subject to a standard under Section 112 of the Clean Air Act. It would be helpful if the OAQ would confirm that a pollutant is regulated for purposes of Section 111 or 112 only for the source categories specified for that pollutant. Otherwise, there may be some confusion as to whether, for example, lead compounds, which are regulated for one or another source category under Section 111 or 112 of the Clean Air Act, can also be regulated for other types of emission sources for which no lead standard has been promulgated This could be done by revising Section 2.20.c to read as follows: *"for any emissions unit subject to a new source performance standard promulgated under section 111 of the Clean Air Act, any air pollutant for which the emissions unit is subject to regulation."* Section 2.20.f could be similarly revised as *"Hazardous air pollutants identified in Section 112 of the Clean Air Act, other than those listed only in Section 112(r), but only to the extent they are accepted by a permittee* *seeking a voluntary permit in accordance with Section 5.5, or are imposed in accordance with the requirements of 45 C.S.R. 34."*

**E. Section 2.24 - Definition of Stationary Source**

The WVMA thanks the OAQ for removing Section 2.24.a, which caused confusion as to what facilities were "subject to any emission control rule promulgated by the Director. . ." However, we disagree strongly with the adoption of a 5 ton per year alternative threshold in addition to the 6 pound per hour threshold that exists currently. Sources that figure their potential to emit on a year-round basis (8,760 hours per year) reach the 5 ton per year threshold at only 1.2 pounds per hour. The addition of the 5 ton per year threshold greatly limits the number of new sources for which permitting is not required. It is not a change that will simplify the permitting process or result in fewer permits for minor sources, and therefore we oppose the change and urge its deletion.

Furthermore, for the reasons given in our discussion of the definition of modification, we oppose the creation of a threshold for HAPs in the definition of stationary source.

**F. Section 4 - Administrative Updates**

We welcome the inauguration of a system for making minor changes to permits. We believe that this will be helpful for the OAQ and for industry as it establishes a framework for making non-modification changes to Reg. 13 permits. However, we are concerned that this section has become unwieldy. The section might have been written as simply as *"Upon agreement of the Director and the permittee, a permit issued in accordance with this rule may be amended to reflect any change that is not a modification."* To the extent this language is not adopted, we offer the following suggestions for improving the administrative update section.

a. Change the "may" in Section 4.1.b. to "must". There is no reason why more than 60 days should be required for issuance of a minor permit amendment.

b. The denial of a request for administrative update is a final action that should be subject to appeal in accordance with *W. Va. Code* § 22-5-14. Section 4.1.c says that it is not subject to appeal, which is contrary to the statute and raises due process concerns.

c. Section 4.1.e states that the Director may order an administrative change in a permit on his or her own initiative. We suggest deletion of this paragraph because it directly contradicts Section 4.1. Either the administrative update process is voluntary on the part of the permit holder or it is not. If it is voluntary, the Chief cannot compel the permittee to go through the administrative update process, and cannot make unilateral changes to the permit application for an administrative update. The purpose of this section is to allow quick action where the OAQ and the permittee are in agreement on the need for the change, so there is no room for compulsion by the OAQ.

d. Owners and operators should be free to proceed, at their own risk, with the changes described in the administrative updates while approval of the administrative update is pending. Requiring owners and operators to wait to implement the minor changes that the updates represent is a waste of time and resources. If the administrative update is ultimately rejected, the OAQ would have sufficient cause and authority to require the permittee to return to its previous condition. However, in the vast majority of cases the update will be approved without significant change.

e. The WVMA urges the OAQ to clarify that increases of emissions above permitted limits are allowed without a change in the permit, as long as a modification does not occur. Presently, Reg. 13 allows such increases of emissions without a modification permit, as long as a notice is given to the OAQ before the change is made. We want to confirm that all permittees are free to continue the present practice of filing permit determination notices of emission increases in accordance with Section 5.13 and proceeding to institute changes immediately, in lieu of requesting administrative updates and waiting for a response. It would be reasonable to do this through an interpretive rule, or the OAQ might add the following language to Section 5: *"Nothing in this section prohibits permittees from giving notice of changes in accordance with Section 5.13 and proceeding to make the noticed changes immediately, in lieu of, or preliminary to, filing a request for an administrative update in accordance with this section."*

**G. Section 5 - Activities Not Constituting Construction**

We appreciate the OAQ's identification of additional activities that can be undertaken without constituting construction, and that can be done before issuance of a permit. We would urge the OAQ to consider one more category of acceptable pre-construction activities - delivery of materials, including completed emissions units, to the site, without further construction of the units, rendering the emissions units operable, connecting them to utilities, placing them on a foundation, or otherwise readying them for operating. This would eliminate the need for an off-site staging area, with repeated handling and movement of the materials and equipment. Such delivery would be at the owner's or operator's own risk, in accordance with Section 5.3, and would be consistent with the types of activities that are allowed at the sites of major modifications subject to New Source Review. This improvement could be brought about with the addition of this language as Section 5.1.i: *"Delivery of material and equipment to the site, without using the materials for construction or installing equipment"* This would be consistent with the November 4, 1993 letter from Dave Howekamp, EPA's Director, Air and Toxics Division, and the December 13, 1995 letter from John Seitz, EPA's Director of the Office of Air Quality Planning and Standards, in which EPA confirmed that for purposes of the major new source review program, temporary on-site storage of equipment and materials is allowed.

**H. Section 5.11 - Setting Emission Limits**

We urge the deletion of the last sentence of this paragraph, which we believe overstates the OAQ's authority to establish emission limits. The OAQ's responsibility is to assure compliance with NAAQS, and it can set limits to accomplish that goal. However, when the limits are not necessary to meet NAAQS, or avoid statutory air pollution, and are not otherwise required by a rule duly promulgated by the OAQ and subject to comment, the Director should not have authority to adopt arbitrary limits on emissions or on operating parameters.

In the alternative, the OAQ should delete the words "and other documented relevant evidence" that it proposes to add in the last sentence of Section 5.12. This clause is not limited to information provided by the permittee in the application, and leaves the OAQ a free hand to impose limits that are not tied to the specifics of the source itself.

**I. Section 5.12 - General Permits**

For some unknown reason the OAQ has proposed limiting general permits to <u>facility-wide</u> permits. We believe this is a mistake. Permits are frequently issued for less than an entire source, and there is reason to continue to do so in the case of general permits. Some emission units by their natures are fairly standard, and warrant general permit treatment, regardless of what else is present at the facility. For example, a general permit might be issued for tanks of a certain size, filled with liquids of a specified volatility, that are not filled and emptied more than a given number of times per year. Such a general permit should be available to anyone, even those who could not claim that such tanks were the only type of emissions unit, or even the only type of tank, present at the facility. We suggest the phrase "facility-wide" be deleted from Section 5.12.

### J. Section 5.13 - Permit Determination Notices

The WVMA urges the OAQ to eliminate this section because we believe the harmful effect on both industry and OAQ, in terms of productive time lost, greatly outweighs any benefits that are conferred by its existence. Those who use the OAQ's permit determination form find it to be almost as burdensome as a permit application, and involves a time commitment that is disproportionate in light of the minor increases involved. There is a concern that these permit determinations have become time consuming and unwieldy, imposing unnecessary burdens on changes that are very minor. The modification thresholds provide adequate protection against NSR increment consumption, and therefore the notifications required by Section 5.13 are unneeded.

To the extent this Section is retained, the OAQ should revise the section to state that those who request administrative updates need not file a permit determination notice. Therefore, we suggest the OAQ add *"This notification is not required for any change for which an administrative update is requested"* to the end of this subsection. Further, it might be helpful if the OAQ were to remind all owners and operators that the section, as written, allows permittees to submit notices and immediately proceed with the change for which notice is given. While this would not relieve anyone of the burden of sending a letter to the OAQ advising it of the changes it intends to make, it might emphasize the more flexible aspects of the section.

### K. Section 6.3 - Determination of Compliance

The WVMA agrees that a source that fails to prove compliance after completion of a stack test should be required to take steps promptly to bring the emissions unit into compliance. However, this section requires the permittee to reduce or add control devices immediately, even though other changes might be made that would be less burdensome and approvable by the Director. We would urge changing the last sentence of Section 6.3 as follows: "*These steps may include, but are not limited to, a reduction in throughput capacity or additional and enhanced control devices.*"

### L. Section 6.4 - Startup, Shutdown and Malfunction Plans

Sources that are subject to MACT standards in 45 C.S.R. 34 are required to have startup, shutdown and malfunction (SSM) plans that set standards for responding to out-of-the-ordinary events at facilities subject to the MACT standard. See 40 C.F.R. 63.6(e). Such plans must be incorporated by reference into a Title V permit. This sets up a potential conflict in the regulatory scheme, as Title V facilities will have the benefit of SSM plans, which allow operation of the source in a manner consistent with plan during a startup, shutdown or malfunction, but Reg. 13 permits will not have similar provisions. The same allowance should be made in Reg. 13 for SSM plans, whether associated with a MACT standard or otherwise. We understand that OAQ staff working on Title V permits have considered this issue and support some means of resolving this difference between Title V and Reg. 13. Accordingly, we suggest that the OAQ adopt the following at a new section, Section 6.4: "*Compliance with the rules of the Director during periods of startup, shutdown or malfunction* *of a stationary source will be determined by compliance with the applicable startup, shutdown or malfunction plan for that source, if any, that has been approved by the Director."*

**M. Section 8 - Public Review Procedures**

The new notice provisions contain some favorable changes. Among these is replacement of the two 30-day notice periods with a single 45-day period. We would ask the OAQ to confirm that this 45-day period is intended to run contemporaneously with the 45 day review period that EPA is allowed to object to Title V permits and modifications (see 45 C.S.R. 30-7.3), so that modifications that are both Reg .13 permits and Title V amendments can be processed on a parallel course and in a timely fashion.

**N. Section 8.6.a - Signage Requirements**

This section requires some sources to post a visible sign indicating that an air quality permit has been required. The WVMA suggests that the OAQ develop signs that a source can elect to use that meets the requirements of the regulations that a source can elect to use in lieu of its own.

**O. Section 12.1 - Fees**

Special provisions are made for the fees assessed for administrative updates. The WVMA believes that similar consideration should be given to reducing fees for registration changes under a general permit. As a rule, these are very straightforward changes that fall within the limited scope of the general permit, and they should not involve a significant amount of review time by the OAQ. As such, a fee of no more than $300.00 would be appropriate.

**P. Section 15.1 - Regulation of HAPs**

Minor source permitting programs are developed principally to ensure that major sources and major modifications are subject to appropriate review under the new source review requirements of the Clean Air Act. The new source review programs are limited to criteria pollutants, and do not include HAPs. That does not mean that HAPs are unregulated. In West Virginia, those toxic air pollutants that are likely to be of concern have already been identified and are regulated pursuant to 45 C.S.R. 27. Many HAPs are also regulated as criteria pollutants because they are volatile organic compounds (VOCs). In short, Reg. 13 is not the place to institute a general program for the regulation of HAPs, and there is no need for changes to Reg. 13 to provide redundant protection to the public.

There is another reason to forego most regulation of HAPs in Reg. 13. Congress has made a policy decision that HAPs will be regulated on a technology basis, through imposition of maximum available control technology on major sources of HAPs, and through a residual risk program that will identify the remaining risks. Technological control, rather than ambient air quality standards, is the manner in which HAPs are to be regulated. To regulate HAPs through a minor source program for criteria pollutants like Reg. 13, in addition to imposing the national technological controls, represents a violation of the statutory requirement that state regulations be no more stringent than federal requirements. See *W. Va. Code* 22-1-3a. This has been more fully set forth in a letter from the Chamber of Commerce to the OAQ, which is a part of the official record of the stakeholder process.

In light of the foregoing, HAPs should not be limited in Reg. 13 permits except in two situations. If the permittee voluntarily seeks HAP limits, in order to become a minor source, Reg. 13 is an appropriate avenue for pursuing those limits. In addition, if case-by-case MACT standards must be imposed, they can be done through Reg. 13, because that is the only way to impose the required technology-based limits.

The WVMA urges the OAQ to clearly limit its regulation of HAPs that are not being regulated as criteria pollutants or toxic air pollutants to those limited instances recited above. This might be done by the following provision: *"Regulation of hazardous air pollutants that are not toxic air pollutants regulated in accordance with 45 C.S.R. 27 is limited to those air pollutants that are regulated in a voluntary permit issued in accordance with Section 5.5 or that are imposed pursuant to 45 C.S.R. 34."*

## III. CONCLUSION

Changes to Reg. 13 will have a significant effect on the viability of West Virginia manufacturers. The ability to quickly make changes to respond to market demands is crucial to the success of West Virginia businesses. The WVMA believes that the changes suggested in these comments, if adopted by the OAQ, will reduce permitting burdens and speed permit issuance without in anyway reducing protections to human health or the environment.

**Karen S. Price**
**President**
**West Virginia Manufacturers Association**

**COMMENTS OF THE WEST VIRGINIA LEAGUE OF WOMEN VOTERS ON REGULATION 13 BEFORE THE OFFICE OF AIR QUALITY WV DEPARTEMENT OF ENVIRONMENTAL PROTECTION**

OCTOBER 12, 1999

I would like to address the specific process of regulatory negotiations, as conducted for "Reg. 13." As I understand it, this is the first time that the citizens have participated in an effort to develop a proposed rule incorporating public stakeholders for legislation. To its credit, the agency proposed and implemented several innovative and constructive techniques to make the meetings work. But, procedural misunderstandings may have undermined prospects for a 3-party deal.

Ground rules initially announced required that, Rule No. 1, all changes be written and, Rule No. 2, reasons support each change. These guidelines served the process well to the extent that they were followed and enforced. However, while allowing the appearance of coming to 3-way agreements as each issue was discussed, industry continued to submit rewrites of the entire rule. Industry first said its papers reflected the negotiated product, and then its own positions, but without reasons. Environmental participants would never have compromised to such an extent had we realized that industry would retract its concessions. This misunderstanding could possibly have been prevented had the agency enforced the rules and industry complied.

As we encountered further complexities, we added ground rules midstream. Rule No. 3, the agency should write is own rules. Because the agency did not record the initial deals the group made, the negotiators used industry's version as the working draft. Given our different views, the group had to waste time at subsequent meetings clarifying what we had already agreed. After staff took over the drafting, this loophole was closed.

Rule No. 4, the entire package should be reviewed before finalizing the proposal. The group agreed to do this after realizing the close connections among number of provisions, but delayed doing so until after the drafting committee had done its work to save time. The risk of not looking at the concepts as they affect each other is missing the big picture. For instance, the combined effect of provisions on pre-permit construction and public participation is that many citizens will not likely know about most permit applications until after the plant has already been built.

Agency staff offered several sessions of stakeholder education on permitting, modeling and hazardous air pollutants that proved extremely informative and useful. These workshops enabled the environmental representatives to engage in technical discussions and to formulate their own positions on these issues. Tutoring citizen participants informs and expedites the negotiations and should definitely be continued in future rule-makings.

Facilitation is an art encompassing many values, including fairness and firmness. In those regards, we have no quarrel with how we were treated. We appreciated the added cordiality and humor. However, especially when lawyers are advocates and citizens seek a voice, facilitators should apply special techniques to balance the players. Either the agency needs to acquire training in facilitation or engage an outside facilitator with these skills

For future regulatory negotiations, ground rules need to be enforced and obeyed throughout. Special facilitation techniques need to level the playing field. Stakeholder education must be available to explain technical matters.

The proposed Reg. 13 is the imperfect product of experimenting with open negotiations and learning some hard lessons. The agency took some successful initiatives and needs to add further protections to empower public participants. These problems must be fixed to give citizens a fair shot at participating in negotiations of the rule on major permits next year.

Respectfully submitted,

Mary Anne Maul

Mary Anne Maul
WV League of Women Voters

**GE Plastics**

**Environmental Programs**
P.O Box 68, SR 892
Washington, WV 26181

**Certified Mail Z 029 751 880**
**Return Receipt Requested**

October 12, 1999

ENV99150

Mr. Terry L. Polen, PE, QEP
Assistant Chief Permitting Section
Office of Air Quality
WV Division of Environmental Protection
1615 Washington Street, East
Charleston, West Virginia 25311-2599

WV DIV OF ENVIR PROTECT
OFFICE OF AIR QUALITY ANNEX
99 OCT 26 P 2:52
RECEIVED

**Re: Regulation 13 Comments**

Dear Mr. Polen:

General Electric Plastic (GEP) joins the West Virginia Manufacturers Association (WVMA) and other stakeholders in expressing appreciation for the opportunity to provide comments on the proposed revisions to Regulation 13 generally addressing permitting requirements within the state of West Virginia.

It is recognized that a number of the changes contained in the proposed regulation are changes that have been negotiated and agreed to among the stakeholders; however, many of the provisions have not yet achieved consensus. We urge that these remaining provisions be addressed and revised as appropriate to gain stakeholder support.

To the extent that the stakeholders have not reached agreement on any of these issues, we urge that the unresolved issues will be addressed by OAQ in the proposed rule that is to be advanced to public hearing on October 12, 1999. The regulated community has consistently identified this regulation as being one of the most significant environmental regulations bearing upon the competitiveness of West Virginia's industries. This is especially significant given the fact that the sources involved are minor sources that typically present very little risk to human health or the environment.

Our comments typically fall into two major categories. The first are comments that identify areas where the proposed revisions to this regulation result in more stringent requirements than exist under the current version of Regulation 13. The second are comments regarding revisions that are designed to streamline and move forward the timeline for the various types of permitting action that are called for in the regulation.

At the outset, it must be recognized that Regulation 13 is one of the most stringent regulations of its kind in the nation. This, and the fact that Regulation 13 has no federal counterpart, all join to create a significant regulatory obstacle that, if left unaddressed, stands to harm the competitive position of West Virginia industry, while at the same time, resulting in little or no environmental benefit.

It is in this spirit that GEP offers the following comments and proposed changes related to the proposed Regulation 13:

## ADMINISTRATIVE UPDATE

### A. Timing

One of the most significant objections which the business community has with respect to Regulation 13 is the extensive time delays that are experienced in obtaining approvals for even the most minor permit changes. We have, therefore, been strong supporters of the addition of a provision to Regulation 13 to create a streamlined process for making minor updates to a valid existing permit.

We were pleased that during one of our stakeholder meetings during the month of April, OAQ itself offered a proposal with respect to administrative updates that contained a provision that made it mandatory for the Director to take final action on a request for administrative update within 60 days of receipt of an administrative update request. That OAQ sponsored language was incorporated into the May 10, 1999 version of a new Section 4 to be added to Regulation 13 to address administrative updates.

However, apparently on its own initiative and without the concurrence of the stakeholder group, OAQ subsequently changed this provision with language that now makes it discretionary as to whether the Director will act on a request for an administrative update within 60 days of its filing. Not only does this unilateral change undermine the stakeholder process, it does so without sound policy justification.

Given the extremely minor nature of the changes that are authorized to be covered by administrative updates, there is no good reason why action on such a request could not and should not be taken by the Director within 60 days of the date of receipt of the request. This is particularly the case when one recognizes that the changes that are eligible for administrative update consideration are so insignificant as to not qualify as a permit "modification" under the terms of Regulation 13 itself.

Moreover, the regulations of the United States Environmental Protection Agency ["EPA"] provide that in issuing administrative updates for federal permits, the "permitting authority <u>shall take no more than 60 days</u> from receipt of a request for an administrative permit amendment to take final action on such request." 40 C.F.R. §70.7(d)(3)(i) (emphasis added).

We therefore urge that the timeliness of authorizing a requested administrative update be addressed by changing Section 4.1.b to provide that the Director shall take action on such request within 60 days of its receipt.

In addition, we note that EPA allows a source to implement administrative updates under the federal program immediately upon receipt of the submittal of such request. Specifically, EPA's regulations provide that 40 C.F.R. §70.7(d)(3)(iii) that:

"The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request."

On this issue there can be no sound public policy necessitating that West Virginia should handle administrative updates of its permits in a way that is more stringent than the manner in which EPA handles administrative updates of federal permits.

We support the language presented by the WVMA in Exhibit A, which proposes language which would not only change Section 4.1.b to make it mandatory for the Director to take action on administrative updates within 60 days of their filing, but also to add a new section 4.5 to allow administrative updates to be implemented immediately upon their filing at the sole risk of the permittee.

B. Air Quality Impact Demonstration

Section 4.3 identifies the circumstances under which a person requesting an administrative update must provide information to the Director. While we certainly recognize the sound public policy that is involved in providing the Director with adequate information upon which to assess the merit of proposed changes, we discussed at great length in the stakeholder process the importance of not unduly burdening this process, given the extremely minor nature of the changes that are being contemplated.

Accordingly, on the critical issue of the extent to which a source would need to submit information assessing potential impact on ambient air quality, we understand that we have reached agreement that no such information would need to be submitted by the permittee unless there was a determination by the Director that there was a potential for significant ambient air quality impact.

The last sentence of Section 4.3 however, is written in a way as to create confusion as to whether there would be an independent duty placed on the person requesting an administrative update to make a demonstration of impact on ambient air quality independent of a request by the Director. We do not believe this was ever the intention of the stakeholder group with respect to this language. We urge therefore, that the last sentence of Section 4.3 be rewritten to make it clear that an applicant for administrative update need only supply information with respect to ambient air quality impacts when requested to do so by the Director and upon a determination by the Director that there is a potential for significant ambient air quality impact.

GEP supports the change to Section 4.3 that would accomplish this clarification as set forth by the WVMA in Exhibit B.

**PERMIT DETERMINATION NOTIFICATION**

Perhaps the most notable example of an extremely burdensome provision in Regulation 13 that adds little or no value to the process is the requirement of Section 5.13 of the proposed rule (Section 4.11 of the existing rule) which provides that even though an operator is not changing its operation in a way that would trigger a permitting requirement, there is a mandatory obligation to notify the Director of that change.

We know of no other situation in which a regulation defines when a permit is required, but also requires that even though a permit is not required, notification must be made to a regulatory agency to confirm that determination. The effect of this requirement is to necessitate the needless expenditure of significant amounts of resources on the part of both the Agency and the regulated community in what has become virtually a full-blown permitting process simply to show that no permit is needed.

Sound public policy dictates that the Agency specify clearly and precisely when an operator is obligated to obtain a permit and place the responsibility on the operator to make application if and when those permitting requirements are triggered. There should be no obligation placed on an operator to make a filing with the Agency to prove that no permit is required.

We urge that the mechanism set forth in proposed Section 5.13 be utilized instead as an optional regulatory rule available to the permittee to address the situation where the regulatory requirements are not sufficiently clear to allow the permittee to determine with sufficient certainty whether a permitting requirement is triggered. In addition, such an optional mechanism should be available to the permittee who might want to seek voluntary restrictions or limitations on the manner in which a change might take place, so as to be certain not to trigger any permitting obligations.

Otherwise, there is no basis for retaining this provision in Regulation 13 and it should be deleted. We have set forth in Exhibit C a proposed revision to Section 5.13 that would convert it to an optional regulatory mechanism and allow the provision to be used to seek voluntary restrictions on operations.

In addition to the changes that the WVMA proposes in Exhibit C, GEP supports the proposal that a conforming change be made to the definition of potential to emit set forth in Section 2.20 by revising the second sentence of that section to read as follows:

> 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 or <u>in any binding and enforceable notification filed pursuant to Section 5.13 of this regulation</u>.

## <u>STATIONARY SOURCE</u>

### A. <u>Exempt De minimis Sources</u>

The proposed revision to Regulation 13 contains for the first time, a list of sources that, by the rule's own terms, are deemed to have insignificant emissions and/or be sources that do not usually have quantifiable emissions which can be practically regulated in determining potential to emit or actual emission changes for purposes of determining whether a permit is required under this rule (See Section 2.6). Throughout our negotiations of this provision during the stakeholder process, the business community was repeatedly assured that items identified on the deminumus source list would not otherwise be subject to permitting as either the construction, modification or relocation of a stationary source.

It is therefore extremely troublesome that the definition of stationary source as proposed by OAQ departs from the understandings reached in the stakeholder group and fails to exempt de minimis sources from the most critical thresholds which apply to a determination of whether a source qualifies as a stationary source. Not exempting de minimis sources from such trigger levels as the 6 pound per hour discharge threshold has the practical effect of forcing an ad hoc determination to be made in the case of each source on the de minimis list as to whether it exceeds any of the numerical thresholds that are included within the definition of stationary source. This places a particularly heavy burden on small businesses since it is small businesses that are most likely to have the types of sources that are set forth on the de minimis source list.

GEP supports the WVMA suggested revision to Section 2.25 set forth in Exhibit D, which makes it clear that de minimis sources do not constitute a stationary source by any of the criteria that would otherwise be applicable to stationary sources.

B. <u>Delete New Trigger Requirements</u>

We are particularly troubled by the changes that have been made in the definition of stationary source to significantly lower the trigger requirements for volatile organic compounds, regulated air pollutants and hazardous air pollutants.

In particular. the proposed definition of stationary source proposes to add a requirement that does not exist in the current rule that emissions of volatile organic compounds or regulated air pollutants in excess of 5 tons per year would cause a source to qualify as a stationary source.

In addition, the rule provides that a hazardous air pollutant threshold level of 2 pounds per hour or 5 tons a year be established. In the current rule, there is no threshold established for hazardous air pollutants as defined in the proposed rule. The current version of Regulation 13 allows only those hazardous air pollutants that are identified in Table 45-13A to become a trigger for the definition of stationary source.

These are material expansions of the definition of stationary source that are certain to bring in many additional sources into the permit program. Obviously, many of these sources will be extremely small in size and again are certain to have a disproportionately large impact on small businesses. It is extremely unclear under these circumstances whether these requirements would have an additional complicating effect because of possible retroactive application.

GEP strongly objects to the addition of these significantly lower threshold requirements to this definition. Attached and set forth in Exhibit E are the WVMA suggested changes that must be made to this requirement to eliminate this concern.

C. Permanent Shutdowns

OAQ on its own initiative, and without the concurrence of the stakeholder group has proposed to add an additional factor to the definition of stationary source that would provide that any source not operating a minimum number of hours over a 5 year time period would be considered permanently shut down. While the provision proposed by OAQ allows a source to demonstrate to the Director reasons why a permit may not be revoked, the provision does not address a source's ability to demonstrate to the Director why a source should not be considered to be permanently shut down.

We believe this issue of concern can best be addressed by relocating this provision into Section 5 of the rules, dealing with permitting requirements and by changing its provisions so that a source can make a demonstration to the Director as to the reasons why a source should not be considered permanently shut down.

GEP supports the WVMA language set forth in Exhibit F, which would accomplish this change.

D. Delete Hazardous Air Pollutant Test

OAQ has on its own initiative, and without stakeholder concurrence, added a new threshold to the definition of modification applicable to those hazardous air pollutants defined by Section 112 of the Clean Air Act. This change is a material expansion of the definition of modification and is inconsistent with the discussions of the stakeholder group which recognize the significant legal impediments that exist within DEP for the regulation of hazardous air pollutants. This will be discussed in greater detail in a later section of these comments. The addition of this new threshold in the definition of modification significantly expands the current definition of modification with respect to hazardous air pollutants. Under the current rule, only a small universe of hazardous air pollutants set forth in Table 45-13A can give rise to a permit modification.

This significantly increases the universe of circumstances under which permit modifications would be necessitated materially expanding the workload and burden on the regulated community, as well as the Agency.

GEP supports the WVMA proposal, set forth in Exhibit G, for deleting this provision.

## MODIFICATION

A. Exempt De minimis Sources

As stated above, with respect to the definition of stationary sources, all de minimis sources should be exempt from the definition of modification. Attached and identified as Exhibit H is WVMA proposed language that would accomplish this change.

B. Emission Control Rule Test

The proposed rule contains a provision that has been added by OAQ that materially and substantially expands the scope of the definition of modification beyond that contained in the existing version of Regulation 13. In particular, OAQ, and without the concurrence of the stakeholder group, has added a provision in Section 2.18.a that indicates that if the change involved is subject to an emission control rule promulgated the Director that it will come within the definition of modification.

This language stands independent of the other numerical thresholds that are set forth in the definition of modification and effectively wipes out those types of historical thresholds that have long defined what constitutes a modification for purposes of triggering permit obligations under Regulation 13. The result is that even the most insignificant changes would be brought within the definition of Regulation 13 if they were the types of changes that would be subject to an emission requirement of another rule of the Director.

When one recognizes that a regulation such as Regulation 7 dealing with emissions from manufacturing operations applies to all fugitive emissions and other similar minor sources, it is logical that the change being advance by OAQ would bring those types of changes within the rule independent of the regulatory thresholds that would otherwise be applicable.

We believe that this type of change is unwarranted and was not the subject of any agreement within the stakeholder process. Attached and set forth in Exhibit I is the WVMA proposal to delete the language that has been advanced by OAQ.

C. 6 Pound Per Hour Threshold Waiver

The definition of modification contains an agreed upon change to the threshold for regulated air pollutants providing that only increases in excess of 6 pounds per hour or 5 tons per year would qualify as a modification.

The regulated community recognizes that there are a significant number of extremely minor changes that can occur at a source that could exceed the 6 pound per hour limitation without coming close to the 5 ton per year trigger. This occurs particularly when storage tanks are filled only once or twice per year where emissions might be in excess of 6 pounds per hour, but only for a limited time period.

We urge that a mechanism be created to allow it to make a demonstration to the sole satisfaction of the Director that increases which exceed 6 pounds per hour but which are less than 5 tons per year are not significant and in which case those changes would not be subject to the permitting process related to modification.

GEP supports the WVMA proposed language set forth in Exhibit J, which would accomplish this change.

D. Delete Hazardous Air Pollutant Trigger

OAQ has on its own initiative, and without stakeholder concurrence, added a new threshold to the definition of modification applicable to those hazardous air pollutants defined by Section 112 of the Clean Air Act.

This change is a material expansion of the definition of modification and is inconsistent with the discussions of the stakeholder group which recognize the significant legal impediments that exist within DEP for the regulation of hazardous air pollutants. This will be discussed in greater detail in a later section of these comments.

The addition of this new threshold in the definition of modification significantly expands the current definition of modification with respect to hazardous air pollutants. Under the current rule, only a small universe of hazardous air pollutants set forth in Table 45-13A can give rise to a permit modification.

This significantly increases the universe of circumstances under which permit modifications would be necessitated materially expanding the workload and burden on the regulated community, as well as the Agency.

GEP supports the WVMA proposed language set forth in Exhibit K, which would change this provision.

**REGULATED AIR POLLUTANT**

A. Delete New Criteria

The definition of regulated air pollutant contains new subsections that add specific new pollutants to the definition of what constitutes a regulated air pollutant. These new sections 2.21.c, 2.21.e and 2.21.f each identify a new universe of air pollutants that would trigger these regulatory requirements.

Section 2.21.f is especially objectionable because it includes all of the hazardous air pollutants listed under Section 112 of the Clean Air Act, as will be discussed below. The Agency's authority to regulate hazardous air pollutants is significantly constrained by its own statute.

Other provisions are objectionable because of the material expansion of the pollutants involved beyond the terms of the existing version of Regulation 13. These changes are being undertaken without the concurrence of the stakeholder group. These issues are complicated by OAQ's proposal that will be discussed in the following section that pollutants regulated for one source category are applicable to all source categories.

GEP supports the WVMA proposed language set forth in Exhibit L, which would restore this definition to its original form.

B. Pollutants Applicable to All Source Categories

OAQ has also offered a paragraph at the end of the definition of regulated air pollutants that is of its own initiative and which does not grow out of the stakeholder process. In particular, the language that is being proposed by OAQ indicates that to the extent that a pollutant is regulated with respect to any one source category, that pollutant would be considered a regulated air pollutant for all source categories.

We believe there is no sound public policy justification for reaching the conclusion, that simply because the Director has chosen to regulate a particular air pollutant from a specific manufacturing process unit, that pollutant must necessarily become a regulated air pollutant with respect to any other source of whatever type or nature.

OAQ has sought to justify its addition of this language by pointing to a memorandum written by an individual with the United States Environmental Protection Agency. Our examination of that document indicates that it is nothing more than guidance and has never been incorporated into a formal Agency regulation and has therefore never been subject to notice and public comment. In addition, the memorandum appears to be specifically limited to an interpretation that is applicable to EPA's operating permit program for major sources and was never intended by the Agency to have applicability, even as guidance, to minor sources such as those that are the subject of Regulation 13 permitting.

GEP supports the WVMA proposed language set forth in Exhibit M, which would change this provision.

**PERMIT CONDITIONS**

In yet another action brought about by OAQ's unilateral proposal to modify Regulation 13 without the concurrence of the stakeholder group, a proposal has been advanced in Section 5.1 by OAQ to allow the Director to impose an emission limit or limit on hours of operation or other constraints based on "other documented relevant information". This is a material and impermissible expansion of the Director's authority to place conditions on permits. The current version of Regulation 13 would allow the Director to place a limitation on a permit only based on information contained in the permit application or with the agreement of the permit applicant.

Authorizing the Director to condition a permit based upon "other documented relevant information" is so vague as to defy a logical interpretation. Allowing the Director to place conditions in a permit simply because he has seen a magazine article regarding technology that might have been used on a facility in another state or another country, or for whatever reason, is bad public policy that has no place in a regulation of this type.

Significantly, the Agency's authority to place conditions in a permit based on "other relevant information" is restricted by statute. West Virginia Code §22-5-4 makes it clear that "no rule of the Director shall specify particular manufacture of equipment nor a single specific type of construction nor a particular method of compliance except as required by the "Federal Clean Air Act" as amended".

In addition, there is concern that to the extent that a Director seeks to establish as a permit condition, a matter that is contained within a permit application, the Director should be called upon to specifically identify what part of the permit application would constitute a condition in the permit. Permit applications are frequently voluminous and complex and contain much information of a general nature which has little or no relevance to air pollution permitting issues. For the Director to simply incorporate into the permit all of the conditions of a permit would be to bring into the permit much information that is not relevant to air pollution regulation.

By placing the specific identity of those items in the permit application that were relied upon by the Office of Air Quality in the issuance of its permit, both the permittee and the Agency's inspectors will have a clear picture of what it is that is being relied upon and what it is therefore that will be enforceable against the permittee.

GEP supports the WVMA suggested language, attached and identified as Exhibit N, that would accomplish both of the changes that are discussed in this section.

**HAZARDOUS AIR POLLUTANTS**

Throughout the stakeholder process related to Regulation 13, concern has been voiced by GEP and the regulated community over the Agency's authority to expand the scope of its regulation of hazardous air pollutants. In Mr. Dave Flannery's letter to you dated April 15, 1999. the WVMA described the significant limitations that are placed on OAQ's authority to regulate HAPs. At the heart of this concern is the statutory requirement that exists in DEP's laws that preclude West Virginia from being more stringent than federal regulation without appropriate justification.

At this time, EPA is in the process of implementing the permitting of regulatory requirements contained in Clean Air Act Section 112. EPA is currently developing MACT requirements for hazardous air pollutants and is scheduled to complete requirements with respect to all other sources by November 15, 2000. Once adopted by EPA, DEP will then be in a position to consider the adoption of the federal program as part of West Virginia's regulatory regime.

In the meantime, Regulation 27 provides DEP with authority to address those high priority toxics and hazardous air pollutants that were identified in EPA's 1987 study of air toxics in the Kanawha Valley. It is the 14 HAPs that are the subject of Regulation 27 that also provide DEP's limited basis for permitting activities under Regulation 13.

We urge, therefore, that Regulation 13 not be expanded beyond the current list of hazardous air pollutants set forth in Table 45-13A. If, however, there is to be a provision in Regulation 13 that is expanded over current regulatory requirements, that provision should be narrowly drawn so as to minimize the extent to which it may run afoul of the Agency's statutory prohibition against being more stringent than federal requirements. Section 15 of the proposed rule continues to be problematic for several specific reasons.

First, it is not clear from a review of the proposed language whether the obligation to provide information on the nature and extent of hazardous air pollutants is intended to apply to more than the activity that is the subject of the specific permitting action involved. To address this uncertainty, we propose that language be added to make it clear that it is only those hazardous air pollutants that result from the specific activity that is the subject of the permit application on notification requirement that should be addressed under this section.

Second, to avoid a situation of having to expend a significant and unnecessary cost for analytical and other services, the requirement to provide the nature and extent of emissions of hazardous air pollutants should be limited to those hazardous air pollutants where the applicant has reason to believe they exist.

Third, the provisions related to the relationship between Regulation 13 and EPA's MACT requirements needs to be clarified to make it clear that a subsequently issued MACT is cause for the Director to conform a Regulation 13 permit requirement to those MACT requirements. For sources subject to the study contemplated by §112(n), we propose that Section 15 not be made applicable unless and until a MACT is determined for those sources, and then only for HAPs covered by that MACT.

GEP supports the WVMA proposed language set forth in Exhibit O, which would accomplish the proposals that have been described in this section of the comments.

**CONSTRUCTION**

Regulation 13 and its provisions and definitions are written in such a way that it is virtually impossible to determine whether an activity or a change in an activity should be handled as "construction" or "modification". Your attention is called to the definition of construction set forth in Section 2.6 of the proposed rule, which indicates that construction can include, among other things, "modification". It seems only logical that construction should be limited to activities related to new sources while modification should be restricted to changes to existing stationary sources. A simple statement added to the end of Section 5.4 would address this issue. Your attention is called to Exhibit P for WVMA language that would accomplish this requested change.

**SUBCHAPTER II SOURCES**

It is apparent that Regulation 13 has no place in the regulation of such sources as nonroad engines, nonroad vehicles, motor vehicles and other emission sources regulated under Subchapter II of the federal Clean Air Act. We urge that a provision be added to the scope of this regulation that would make this point clear. WVMA language that would accomplish this change is set forth in Exhibit Q.

**VOLUNTARY PERMITS**

Even though the Director is under an obligation to issue required permits under Regulation 13 within 6 months, the rule contains a provision in Section 5.6 that indicates that an application for a voluntary permit need not be acted on by the Director sooner than 12 months. Twelve months is simply too long to have a request for a voluntary permit pending before the Agency. Voluntary permits are critical to obtaining status as a synthetic minor for purposes of avoiding PSD review and prompt action on such a request needs to be pursued if the business community is to take full advantage of these critical regulatory mechanisms.

GEP supports the WVMA suggested change, presented in Exhibit R, which would reduce the time period for Director action on voluntary permits from 12 months to 6 months.

**WEST VIRGINIA CODE CITATION**

In Sections 5.6 and 5.7 of the rules, there is an incorrect statutory citation. The existing version of Regulation 13 refers to West Virginia Code §16-20-1 et seq. in each of these sections. The correct counterpart citation to the current version of the West Virginia Code is W. Va. Code §22-5-1 et seq.

GEP looks forward to receiving your response to these requested changes and to working with you, the other stakeholders, and the Legislature in completing the process related to the revisions to this important regulation.

Sincerely,

Dale R. VanDeVelde

Dale R. VanDeVelde, PE
EHS Manager, Washington Site

**<u>EXHIBIT A</u>**

## ADMINISTRATIVE UPDATE

Timing

---

4.1.b. Within sixty (60) days from receipt of a complete application for an administrative update, the Director ~~may~~ <u>shall</u> take final action on such a request. . .

4.5 <u>The permittee may implement the changes addressed in the request for an administrative update immediately upon submittal of the request. After the permittee makes the change allowed in the preceding sentence, and until the Director takes any of the actions specified in subsection 4.1.b of this rule, 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.</u>

**EXHIBIT B**

## ADMINISTRATIVE UPDATE

Air quality impact demonstration should only be required when requested 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 by 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. <u>If such a request for information is made by the Director</u>, 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.

**EXHIBIT C**

## PERMIT DETERMINATION FORM (PDF)

Optional PDF

---

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 pollutant, in an amount below the levels which require a permit to modify, excluding the exemptions in Tables 45-13B and 45-13C, <u>may</u> 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 <u>taking into account any described limitations on expected use of the unit</u> 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. <u>If a permit is not required, the representations, calculations and assumptions in the written notification shall be binding upon the owner or operator of that source and be enforceable.</u>

**<u>EXHIBIT D</u>**

## STATIONARY SOURCE

Exempt de minimis sources

---

2.25 "Stationary source" means, for the purpose of this rule, any building, structure, facility, installation, or emission unit or combination thereof, <u>which does not constitute a de minimis source and</u> which:

**EXHIBIT E**

**STATIONARY SOURCES**

Delete new trigger requirements

---

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

~~2.25.c. Discharges or has the potential to discharge more than two (2) pounds per hour or five (5) tons per year of aggregated hazardous air pollutants; or~~

## STATIONARY SOURCE

Delete permanent shutdown determination for operations less than 500 hours (in favor of a new Section 10.4)

---

2.25.f. A source which has not operated at least 500 hours in one, 12-month period within the previous five (5)-year time period ~~will~~ <u>may</u> be considered permanently shutdown, ~~U~~<u>u</u>nless such source can provide to the Director, with~~in~~ reasonable specificity, information to the contrary~~,~~. ~~a~~<u>A</u>ll permits may be <u>modified</u> revoked and/or reapplication or application for new permits may be required <u>for any source determined to be permanently shutdown</u>.

**EXHIBIT G**

## STATIONARY SOURCE

Delete hazardous air pollution trigger

---

2.25.c. ~~Discharges or has the potential to discharge more than 2 pounds per hour or 5 tons per year of aggregated hazardous air pollutant; or~~

**EXHIBIT H**

## MODIFICATION

Exempt de minimis sources

---

2.18 "Modification" for the purpose of this rule means any physical change in or change in the method of operation of any existing stationary source <u>which does not constitute a de minimis source and</u> which:

**<u>EXHIBIT I</u>**

## MODIFICATION

Delete "emission control rule" test as more stringent than current rule

---

~~2.18.a. Is subject to any substantive requirement of an emission control rule promulgated by the Director; provided that any facility, stationary source or emissions unit which meets or falls below the criteria delineated in Table 45-13B shall not be considered a stationary source; or~~

**EXHIBIT J**

## MODIFICATION

The 6 pph threshold should be waivable by Director if insignificant

---

2.18.b. Results in an emissions increase of ~~two~~ six (~~2~~6) 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 unless the permittee demonstrates to the sole satisfaction of the Director that such an increase is less than five (5) tons per year and that the nature and amount of such an increase is insignificant.

**EXHIBIT K**

## MODIFICATION

Delete hazardous air pollutant trigger

---

2.18.c. ~~Results in an emissions increase of 2 pounds per hour or 5 tons per year of aggregated hazardous air pollutants; or~~

<u>**EXHIBIT L**</u>

## REGULATED AIR POLLUTANT

Delete new criteria based on elaboration of existing criteria

---

2.21.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;~~

~~2.21.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.~~

~~2.21.f. Any air pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Clean Air Act, specifically excluding air pollutants listed only in 112 (r).~~

**EXHIBIT M**

## REGULATED AIR POLLUTANT

Delete provision which makes a pollutant regulated for one group of sources applicable to all sources (a provision more stringent than current rule)

---

> ~~If a pollutant is regulated for one source category by a standard or other requirement, then the pollutant is considered a regulated air pollutant for all source categories. This rule is relevant to all the pollutants listed under items c, d and e above with the exception of those which are the subject of case by case MACT determinations under section 112(g) (2).~~

**EXHIBIT N**

## PERMIT CONDITION

Limit authority to prevent a permit condition from being inconsistent with "applicable requirements" and delete provision allowing conditions to be based on "other relevant information." Specifically identify permit application conditions

---

5.11. The Director may impose any reasonable condition as part of a granted construction, modification, existing stationary source operating permit Class II administrative update 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. <u>Any portions of the permit application (including plans and specifications) that are to be made permit conditions must be specifically identified in the permit itself.</u>

**EXHIBIT O**

## HAZARDOUS AIR POLLUTANTS

Limit provision to specific change involved at to circumstances where there is reason to believe a HAPS exists. Allow for permits to be conformed to MACT

---

15.1. For purposes of establishing an inventory of hazardous air pollutants, any person which makes an application for a permit as required by Section 5.1 or 11.2 of this rule, or files a notification as required by Section 5.13 of this rule, shall provide the Director with information regarding the nature and extent of any emissions of hazardous air pollutants resulting from the specific construction, modification or relocation that is the subject of the application or notification where the person has reason to believe that a hazardous air pollutant is being emitted. Hazardous air pollutants (that are not listed on Table 45-13A) shall be subject to limitations or controls only to the extent necessary by (1) to incorporate an applicable requirement, (2) to implement Section 5.5 of this rule related to voluntary permitting, (3) to establish case-by-case maximum achievable control technology (MACT) requirements as required by 45CSR34, or (4) to set an emission limit reflective of the sources' maximum potential to emit as provided in the permit application. A subsequently issued MACT requirement shall be cause for an owner or operator of an affected facility to request the Director to conform the permit to reflect the requirements of the MACT. In the event of such a request, the Director shall conform the permit to the applicable MACT requirement. Any 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 this section until such time as it has been determined that MACT controls are applicable. In the event EPA determines that MACT controls are applicable to a 112(n) source category, this section shall be applicable only to the HAPs subject to such MACT.

## CONSTRUCTION

Changes to existing sources should be handled as modifications

---

5.4. 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. <u>Any changes to an existing stationary source that are subject to permitting should be treated as a modification and not as construction</u>.

**EXHIBIT Q**

## SUBCHAPTER II SOURCES

Exempt mobile sources regulated under Subchapter II of CAA

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, temporary permit or a general permit, and for filing notifications of changes not otherwise subject to the permit requirements of this rule. <u>This rule does not apply to non-road engines, non-road vehicles, motor vehicles, or other emission sources regulated under Subchapter II of the federal Clean Air Act; provided, however that the Director may regulate such sources pursuant to another rule promulgated for that purpose</u>.

**EXHIBIT R**

## VOLUNTARY PERMIT

Allow voluntary permits to be used for new facilities and require action within 6 months

---

5.6. The Director shall complete a review of any application for an existing stationary source operating permit within ~~twelve (12) months~~ six (6) 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.

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

OFFICE OF AIR QUALITY
... -1 P 1:38

Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599

OCT 26 1999

Dear Mr. Kropp. Skipp

Enclosed please find a hard copy version of comments prepared by the Environmental Protection Agency (EPA) on West Virginia's July 16, 1999 draft revisions to 45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation" (45CSR13). EPA received copies of the July 16, 1999 draft revisions for review during a September 27-28, 1999 permitting meeting in Harpers Ferry, West Virginia. The comments consist of issues pertaining to the changes to 45CSR13 from the August 27, 1994 version of the rule (Enclosure 1), as well as existing deficiencies identified during EPA's review of West Virginia's August 27, 1994 45CSR13 State Implementation Plan (SIP) submittal (Enclosure 2). EPA previously transmitted these comments to your permitting staff on October 12, 1999.

Please be advised that there are certain provisions of the July 16, 1999 draft revisions which do not meet federal requirements for minor new source review programs. EPA plans to work closely with your office to ensure that the final revisions to 45CSR13 meet all federal requirements and are eligible for approval into the West Virginia SIP. If you have any questions, please feel free to contact me or Jennifer M. Abramson of my staff at (215) 814-2066.

Sincerely

Judith M. Katz, Director
Air Protection Division

Enclosures

cc: Terry Polen, WVOAQ
Beverly McKeone, WVOAQ

WV DIV OF ENVIR PROTECT
OFFICE OF AIR QUALITY
... NOV -2 A 10:21

October 12, 1999

## EPA Comments on July 16, 1999 DRAFT 45CSR13

1. Section 1.1 Scope. The reference to temporary permit may have to be removed in accordance with comments below.

2. Section 2.1.c "Actual emissions". The ability of a source to rely on actual emissions of an existing sources with similar operations must be reworded to ensure that the new emission unit can only be compared to other emissions units of the same kind which operate under the same operating conditions and production levels.

3.Section 2.6 "De minimis source". The second sentence seems more appropriately placed in a technical support document to the DRAFT rule rather than in the rule itself. Further, the rest of the definition which discusses the implications of being a Tier I source of Table 45-13B and a Tier II source of Table 45-13C does not make sense in the definition section. It also is not clear what is meant by "Emissions to the extent quantifiable from Tier I equipment or activities do not need to be aggregated..unless otherwise required by the Director". [Aggregated for what purpose? It appears that 45CSR13 is exempting emissions from Tier I activities completely unless the Director says otherwise or the pollutant being emitted is a nonattainment pollutant as per the second paragraph. In these two instances, what does it mean that a source does not have to aggregate quantifiable emissions ?] Similarly, it is not clear how quantifying/monitoring aggregated emissions from Tier II equipment or activities will be used in determining whether the source triggers applicable "construction" or "modification" permitting requirements. (Do you mean when the source adds a new or modifies an existing Tier II activity ?). Also, it is inappropriate to exempt emissions from a de minimis source in the determination of potential to emit for any rule other than 45CSR13 (i.e. the references to 45CSR14 and 45CSR19 in the second paragraph must be removed). The third paragraph is also unclear. Does it mean emissions increases from debottlenecked process operations resulting from the addition of new (or changes to existing) Tier I equipment or activities need to be counted in determining whether construction or modification has occurred ? Last paragraph: it is not clear what procedures of "...section 4 to petition the agency for a determination of regulatory applicability..." this provision is referring to.

4. Section 2.13 "Existing stationary source operating permit". This appears to be a voluntary provision. Is it desirable to limit its availability to only sources which meet the 2.26 definition of stationary source ?

5. Section 2.18. "Modification". Note: EPA cannot comment on the adequacy of proposed changes in emission level cutoffs for determining what is a "modification" without justification by West Virginia on how such levels were established.

6. Section 2.18.a. "Modification". As written, this provision appears to be saying that any physical change or change in method of operation to a section 2.26 stationary source subject to a substantive requirement of an emission control rule is a modification. Is this what was intended?

Additionally, what is a facility and why does it need to be listed separately? [Note: Doesn't the 2.26 definition of stationary source encompass the facility concept, as well as the concept that 45-13B activities do not have to be considered as a stationary source even if subject to a substantive requirement of an emissions control rule?].

7. Section 2.18.d. "Modification". There is no Table 45-13A in EPA's copy of July 16, 1999 version of 45CSR13. This provision appears to consider a 10% increase of a 45CSR13A pollutant a modification only if, prior to the modification, the source met the 45CSR13A thresholds for that same pollutant. Is this what is intended ? Also, because we are defining "modification", it would be more appropriate to use the phrase "...prior to the physical change or change in method in operation" versus "...prior to the modification". Also the terminology "notwithstanding" is confusing -- does West Virginia mean pre or post 45CSR27 control potential to emit ?

8. Section 2.18.e. "Modification". There is no Table 45-13A in EPA's copy of July 16, 1999 version of 45CSR13.

9. Section 2.18.f. "Modification." The term "source" was changed to "facility". This term should be defined.

10. Section 2.18.h.1. Why is this provision necessary? It appears that such an activity would never trigger a modification as defined by 2.18.b. - e. Also, are there any testing or notification requirements associated with this exception to show that replaced air pollution control equipment is at least as effective ?

11. Section 2.18.h.4.. "Modification". It must be made clear that increases in throughput or production rates are not exempt if there is an explicit limitation on production rates <u>or throughput</u> in an applicable permit or order.

12. Section 2.18.h.5 "Modification". It is not clear what is meant by "..provided the source is designed to accommodate such alternative fuel without increasing emissions above the levels provided in this paragraph...". Aren't "designed to accommodate" and "staying below modification trigger levels" two separate concepts ? If both must be met in order to fall within this provision, perhaps it should be reworded to clarify that the source must have been designed to accommodate the alternative fuel AND that resulting emissions are not above the modification trigger levels.

13. Section 2.18.h.6. "Modification". Grammatically, this provision should be reworded to be parallel with the other provisions of 2.18.h. (e.g. physical changes which have been determined by the Director upon written request...). Substantively, this provision should clarify that the determination must be made for all regulated air pollutant emissions. Also, the term "grand-fathered natural gas compressor engine" must be defined. [Does this provision apply to engines which are grandfathered from all applicable requirements, or just some?]

14. Section 2.20. "Potential to emit". GENERAL: Any changes in the 45CSR13 definition of "potential to emit" from the definitions of "potential to emit" in 45CSR14 and 45CSR19 cannot be relied on for purposes of netting out of these major NSR requirements. What is meant by "integral to the unit", "...measured...", and "control device" ? These things should be clarified. In section 2.20.b., what does *ADD LANGUAGE OF NONAPPLICABILITY* in the parenthetical mean? (is something missing?)

15. Section 2.25.a. "Stationary source". What is meant by "...subject to any substantive requirement of an emission control rule promulgated by the Director"? Also, it is unclear what is trying to be accomplished by the language following "..provided". [Isn't it true that the Table 45-13B activities could be at least part of a stationary source if the Director determines that quantifiable emissions have to be included in the determination of potential to emit or such activities emit nonattainment pollutants?] It may make more sense to state in 2.25.a "Excluding a facility, stationary source or emissions units...of Table 45-13, is subject to any substantive...promulgated by the Director".

16. Section 2.25: Stationary source" Note: EPA cannot comment on the adequacy of proposed changes in emission level cutoffs for determining what is a "stationary source" without justification by West Virginia on how such levels were established.

17. Section 2.25.b. "Stationary source". Please explain how the term "potential to discharge" differs from the term "potential to emit" used in the 2.6 definition of De Minimis source.

18. Section 2.25.f. "Stationary source". Grammatically, this provision should be reworded to be parallel with the other provisions of 2.25. Substantively, this provision is pretty vague. What if such source exists at a facility with other operating units which make the facility a stationary source? Where is it that such sources are required to keep records of the hours of operation? Are such records required to be submitted to the Director? How will the Director know to revoke? Under what conditions will such revocations or re-applications be required?

19. Section 2.28 "Volatile Organic Compound" It is unclear whether the specific compounds will be listed or incorporated by reference.

20. 4.1.b.1. The "...or upon the Director's initiative" doesn't make sense in context.

21. Section 4.2. The phrase ...any <u>aspect</u> of the permitted source..." is vague.

22. Section 4.2.a. The phrase "but not limited to" should be removed as such determination should be made in a regulatory context.

23. Section 4.2.a.3. It should be clear that only changes dealing with the timing elements of a construction schedule qualify. Changes in the authorized construction schedule as to what is being constructed do not qualify.

24. Section 4.2.a.4. Please keep in mind that the administrative update likely will not satisfy 45CSR30 reopening requirements which will be required of Part 70 sources.

25. Section 4.2.a.5. Sources who did not provide accurate information or did something different than what was described in application or what was authorized by the permit should not be eligible for the administrative update.

26. Section 4.2.a.6. This provision should exempt removal of air pollution control equipment.

27. Section 4.2.b. The phrase "but not limited to" should be removed as such determination should be made in a regulatory context.

28. Section 4.2.b.1. Changes which affect permit conditions that were relied on by the source to net out of major PSD or major NSR requirements, or to be treated as "synthetic minors" for other major source requirements should not be eligible.

29. Section 4.2.b.2. Other "minor changes" must be defined somehow to ensure that environmentally significant changes will not be eligible.

30. Section 5.1.b.2. As written, it does not flow. The provision should probably be reworded. Also, there does not appear to be a 5.1.b.1.

31. Section 5.1.c. The reference to "such" activities is not clear. (Maybe this provision should be grouped with, or immediately follow, section 5.1h ?)

32. Section 5.11. Since some Class I administrative updates may involve revising the permit to implement new requirements, it seems like the Director should be able to impose reasonable conditions for Class I administrative updates.

33. Section 5.13. The distinction between new and existing stationary sources in not clear. Also, don't emissions from Table 45-13B and 45-13C activities need to be accounted for in some instances ? The wholesale exclusion in the phrase "excluding the exemptions in Tables 45-13B and 45-13C" does not seem to capture these instances.

34. Section 6.3. Instead of "...compliance with such stack test...", the language should state "...compliance with permit conditions, rules of the commission or W.Va. Code §16-20-1, et seq.". Also, what if a permit revision is needed to ensure that allowable throughput capacities or control devices are enforceable? Will the source be put on a compliance plan?

35. Section 7.1. In accordance with federal regulations, the provision should require modeling as a matter of course unless the Director exempts particular constructions ro modifications from modeling requirements. Further, the provision should clarify that all modeling will be conducted in accordance with 40CFR51, Appendix W - Guideline on Air Quality Models (GAQM).

36. Section 8 "Public Review Procedures":

(i) As written, Temporary Construction and Modification permits may not be processed according to the Notice Level A procedure. Until it is demonstrated that such changes are "less environmentally significant" deserved of reduced public participation requirements, the Federal requirements for public participation are not met.

(ii) Due to their widespread impact for a given source category, General Permits are environmentally significant and should be processed according to the Notice Level C procedure.

(iii) To comport with Federal public participation requirements, it must be clear that the non-confidential portions of the permit applications as well as the engineering evaluation and draft permit are available for public inspection in the affected area.

(iv) Section 8.9: EPA must receive a copy of the public notice too.

37. Section 11. EPA proposed disapproval of a similar temporary permitting procedure of the April 27, 1994 version of 45CSR13. These provisions should be modified or removed.

38. Section 14.1. The provision should discuss permit issuance procedures for this type of permitting.

Enclosure 2

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**REGION III**
**841 Chestnut Building**
**Philadelphia, Pennsylvania 19107**

**SUBJECT:** Proposed Approval and Proposed Disapproval of Revision to the West Virginia State Implementation Plan (45CSR13- Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation) - Technical Support Document

**DATE:** DEC 1 1997

**FROM:** Jennifer M. Abramson, Environmental Engineer (3AT23)
Permit Programs Section

**TO:** SIP Docket File

**THRU:**
Kathleen Henry, Chief
Permit Programs Section

## I. Background

### A. Minor New Source Review

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires every SIP to "include a program for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." EPA's regulations now codified at §§ 51.160-164 have since the early 1970s required a new source review (NSR) program, and one is included in every state implementation plan (SIP). This requirement predates and is separate from the requirement also set forth in section 110(a)(2)(C) that States have "major" NSR permitting programs under part C for the prevention of significant deterioration of air quality (PSD) and part D for nonattainment area permitting (nonattainment NSR) of title I.

## B. Federally Enforceable State Operating Permit Programs

Many stationary source requirements of the CAA apply only to "major" sources. Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in various portions of the CAA. For example, section 112 Maximum Achievable Control Technology (MACT) and title V operating permit requirements apply largely to sources with emissions above specified levels, and are classified as major. To determine whether a source is major, the CAA focuses not only on a source's actual emissions, but also on its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. In situations where unrestricted operation of a source would result in a potential to emit above major source levels, one way such source may legally avoid program requirements is by accepting federally-enforceable permit conditions which limit emissions to levels below the applicable major source thresholds. As a result, the source becomes what is commonly referred to as a "synthetic minor" source. [1] Federally-enforceable permit conditions, if violated, are subject to enforcement by the Environmental Protection Agency (EPA) and by citizens in addition to the state or local agency.

On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-title V) federally enforceable state operating permit programs (FESOPPs). See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential

---

[1] Several other mechanisms for major sources (including major sources of hazardous air pollutants) to become "synthetic minors" and legally avoid major source program requirements exist. For more information, refer to the memorandums entitled "Extension of January 25, 1995 Potential to Emit Transition Policy (August 28, 1996), "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (January 22, 1996), "Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)" (January 25, 1995), and "Approaches to creating Federally-Enforceable Emissions Limits" (November 3, 1993).

emissions to create "synthetic minor" sources. In short, the criteria require state programs to: (a) be approved into the SIP, (b) impose legal obligations to conform to the permit limitations, (c)provide for limits that are enforceable as a practical matter, (d) issue permits through a process that provides for review and an opportunity for comment by the public and by EPA, and (e) ensure that there will be no relaxation of otherwise applicable federal requirements.

**C. Federally Enforceable Permit Conditions for Hazardous Air Pollutants**

Section 110 of the CAA authorizes EPA to approve into state SIPs programs related to the attainment and maintenance of national ambient air quality standards. Accordingly, section 110 rulemaking actions on state minor new source review and FESOPP programs pertain to criteria air pollutants (i.e. pollutants for which national ambient air quality standards have been promulgated) only. While in some cases, permits issued pursuant to such SIP approved programs effectively impose federally enforceable conditions on hazardous air pollutants (HAPs), such cases are limited. EPA approval of state permit programs under section 112(l) of the CAA is a more efficient and widely applicable process to make permit conditions involving HAPs, including limitations on potential to emit, federally enforceable. Section 112(l) of the CAA provides EPA with the authority to approve state programs which regulate sources of HAPs, analogous to the section 110 authority provided to EPA for sources of criteria air pollutants.

EPA believes it has the authority under section 112(l) to approve state programs for the purpose of making permit conditions involving HAPs federally enforceable. EPA believes it is consistent with the intent of section 112 of the CAA for states to provide mechanisms through which sources may avoid classification as major sources by obtaining federally enforceable limits on potential to emit. Other available mechanisms for sources of hazardous air pollutants to avoid classification as major sources are available (See footnote 1).

## II. Description of Revisions

On August 26, 1994, the West Virginia Department of Environmental Protection (WVDEP) submitted for EPA approval a revision to the West Virginia State Implementation Plan (SIP) regarding the issuance of minor preconstruction and federally enforceable state operating permits. The revision consists of an updated version of 45CSR13 "Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation", effective June 1, 1974, which was approved into the SIP November 10, 1975. Upon its April 27, 1994 effective date, the updated version of 45CSR13 entitled "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation" replaced the June 1, 1974 version of 45CSR13 in state regulations.

The 45CSR13 SIP revision represents comprehensive changes from the SIP approved version of the rule. These changes include:

* An exemption of sources which have been issued permits pursuant to the program developed to meet the requirements of Title V of the Clean Air Act from 45CSR13 permit review.(Activated upon approval into the SIP)
* Exemption of sources undergoing major constructions, modifications and relocations from 45CSR13 permit review.
* Deletion of "indirect sources" from the rule.
* Removal of registration requirements and default permit issuance provisions.
* Modification of applicability criteria.
* Establishment of new/revised provisions for permit application completeness determinations and deadlines for permit issuance; for issuing general permits, temporary permits and permit transfers; for filing notifications for changes not subject to permit requirements; and for canceling permits.
* Incorporation of new nomenclature
* New revocation provisions for operating permits based on Title V permit issuance.
* Inclusion of "opt-in" and operating permit provisions for existing stationary sources.
* Incorporation of public participation and other provisions

to conform to EPA's June 28, 1989 final rule for state operating permit programs.

On September 5, 1996, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter clarifying that West Virginia also requests EPA approval under CAA section 112(l) of the 45CSR13 program submitted on August 26, 1994. This letter also provided a clarification relating to "major stationary source" determinations under 45CSR13.

### III. Evaluation

In order to evaluate the approvability of West Virginia's submittal as a SIP revision, the changes from the SIP approved version of 45CSR13 must meet all applicable requirements (procedural and substantive) of 40 CFR Part 51 and the CAA. EPA has reviewed this SIP revision package in accordance with the completeness criteria described in § 110(k)(1) and 40 CFR Part 51, Appendix V and has found it to be administratively and technically complete. A detailed analysis of the completeness determination can be found in the Completeness Checklist located in this docket.

EPA's requirements for SIP approval applicable to minor new source review permitting programs are established in Part 51, subpart I- Review of New Sources and Modifications, sections 51.160. through 51.164. Other sections of subpart I, applicable only to new sources and modifications which are major, do not apply and are thus not addressed in this analysis. [2] EPA's federal enforceability criteria applicable to state operating permit program (non-title V) SIP submittals are discussed in a June 28, 1989 Federal Register (54 FR 27274). These criteria, in conjunction with the statutory requirements of CAA section

---

[2] West Virginia has developed separate rules to meet the requirements of subpart I applicable to major sources, namely, 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration" and 45CSR19 - "Requirements for Pre-Construction Review, Determination of Emissions Offsets for Proposed New or Modified Sources of Air Pollutants and Emission Trading for Intra source Pollutants".

112(l)(5), are also used to evaluate the approvability of the 45CSR13 program for the purpose of creating federally enforceable permit conditions for sources hazardous air pollutants (HAPs).

## Subpart I- Review of New Sources and Modifications

### § 51.160 Legally Enforceable Procedures

*(a) Each plan must set forth legally enforceable procedures which enable the state or local agency to determine whether the construction or modification of a stationary source, or combination of stationary sources will result in a violation of the control strategy or will interfere with the attainment or maintainment of a national standard in the state in which the source is located (or in a neighboring state).*

In general, the program's function in providing the State with an opportunity to determine the impact of proposed new constructions and modifications on air quality has not changed from the SIP-approved version of the rule. The revised 45CSR13 permitting program sets forth legally enforceable procedures which enable West Virginia to evaluate sources of air pollution and to issue permits for construction, modification, relocation, and operation of such sources in accordance with applicable emissions standards, air quality increments, the ambient air quality standards, the intent and purpose of 45CSR13, and W. Va. Code §16-20-1, et.seq. Although the timeframes for submitting permit applications and issuing permits have been revised, the procedures continue to provide that construction, modification or relocation without the required permit is a violation under 45CSR13. Although the revised procedures do not explicitly apply to "combinations of stationary sources", the section 2.25 definition of "Stationary source" incorporates the concept of combining individual stationary sources consistent with the approach used under the SIP approved version. The revised procedures also do not explicitly address the impact of constructions, modifications, or relocations at a source on a neighboring state's control strategy or ability to attain or maintain a national standard. However, as required by the SIP-approved version of 45CSR13, applicants are required to submit information sufficient to determine whether such activities will be in conformance with the provisions of applicable rules promulgated by the Commission. Such information, inclusive of but not limited to, site information, plans, descriptions, specifications, and drawings related to the proposed construction, modification, or relocation, the manner in which it will be operated, maximum emissions rates and emissions control equipment data, should also be sufficient for West Virginia to also determine the impact of constructions, modifications, or relocations on a neighboring state.

One significant change in the program's impact derives from sections 1.1 and 11.2 which seek to exempt sources that have been issued operating permits pursuant to Title V of the Clean Air (herein after referred to as "Title V sources") from minor new source permit review. [3] If approved, such an exemption would preclude the Chief from being able to determine whether the construction of new non-major sources or non-major modifications at Title V sources result in violations of the control strategy or interfere with the attainment or maintainment of a national standard. As all major sources are required to be permitted under Title V, the exemption would eventually apply to all major sources in the state of West Virginia. Although the construction of non-major sources or non-major modifications at Title V sources may be subject to the permit modification procedures of West Virginia's Title V permitting program, the permit modification procedures of West Virginia's Title V permitting program do not meet the federal requirements of 40 CFR 51 for minor new source review. The permit modification procedures required by EPA's Title V regulations, 40 CFR 70, did not replace the requirements which previously existed at 40 CFR 51 for the review of new sources and modifications.

*(b) The procedures must include means by which the state or local agency will prevent constructions or modifications if determined that such activities will result in a violation of the control strategy or interfere with the attainment or maintainment of NAAQS.*

The revised 45CSR13 procedures include provisions whereby the Chief will issue an order to prevent construction, modification, or relocation if it is determined that such proposed activity

[3] Section 11.2 specifies that the exemption is activited upon approval into the West Virginia SIP.

will violate applicable emissions standards, interfere with the attainment or maintenance of an applicable air quality standard, cause or contribute to a violation of an applicable air quality increment, or is otherwise inconsistent with the intent and purpose of 45CSR13 or W.Va Code § 16-20-1, et, seq. The procedures provide that such construction, modification or relocation without the required permit is a violation under 45CSR13. Except for the additional criteria which prevent the Chief from issuing permits for activities which would contribute to a violation of an applicable air quality increment or would be otherwise inconsistent with the intent and purpose of W.Va Code § 16-20-1, et, seq., this feature of West Virginia's 45CSR13 program is substantively unchanged from the SIP-approved version. The revised 45CSR13 removed the provisions of the SIP-approved rule which authorized sources who did not receive permits within the specified regulatory timeframe to proceed with constructions, modifications, or relocations (commonly referred to as "default permit issuance").

Due to the new exemption of Title V sources from minor new source permit review (see discussion in 40 CFR 51.160(a) above), the Chief will be unable to prevent the construction of non-major sources and non-major modifications at sources which have been issued Title V permits which result in a violation of the control strategy or interfere with the attainment or maintainment of NAAQS.

*(c). Procedures must provide for the submission, by the owner or operator of the stationary source to be constructed or modified, information on the nature and amounts of emissions to be emitted by it or emitted by associated mobile sources, the location, design, construction, and operation of such stationary source, as necessary for the permitting authority to make a determination.*

The revised 45CSR13 procedures require permit applications to construct, modify, or relocate to contain sufficient information as, in the judgement of the Chief, will enable the Chief to determine whether such activity will be in conformance with the provisions of any applicable rules promulgated by the Commission. The procedures specify that such information may include, but not be limited to, site information, plans, descriptions, specifications, and drawings related to the proposed construction, modification, or relocation, the manner in which it will be operated, maximum emissions rates and emissions control equipment data. The revised 45CSR13 includes new procedures which require the Chief to conduct completeness reviews of all permit applications and to notify the applicant in writing as to whether the application is complete and specify when additional information is required. Notwithstanding the Chief's completeness evaluation, permit applicants are required to subsequently submit in a timely manner, any additional or corrected information determined by the Chief to be necessary for permit approval. Except for the explicit requirements for sources to now submit information on maximum emissions rates and data on emissions control equipment, and to submit additional or corrected information necessary for permit approval, the information requirements for permit applications have not changed in substance from the SIP-approved version. Similar to the SIP-approved version of 45CSR13, the revised procedures do not explicitly require information on the nature and amount of emissions from "associated mobile sources" to be submitted as part of a source's permit application. While Congress restricted EPA's involvement with reviewing mobil source impacts associated with the construction or modification of facilities such as sport complexes and shopping centers (otherwise known as "indirect source review"), the requirement for sources who are subject to new source review to submit information on the nature and amount of emissions from "associated mobile sources" remains. No changes to the permit application provisions regarding associated mobil sources have been made from the SIP approved version of 45CSR13.

*(d) Procedures must provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy.*

Consistent in substance with provisions in the SIP-approved version of 45CSR13, the revised 45CSR13 procedures specify that possession of a permit does not relieve any person of the responsibility of complying with any and all rules of the Commission or W.Va. code §16-20-1, et.seq.

*(e) Procedures must identify types and sizes of stationary sources which will be subject to review under this section. The plan must discuss basis for determining which facilities will be*

*subject to review.*

Applicability to 45CSR13 has changed in several ways from the SIP approved version. These changes include new exemptions for sources undergoing major constructions, modifications, and relocations to avoid duplicate permitting requirements since such activities are now subject to either the major preconstruction permit requirements of West Virginia's 45CSR14(PSD) or 45CSR19(non-attainment NSR). The revised 45CSR13 also deletes a category of sources referred to as "Indirect Affected sources" from the rule consistent with current statutory SIP requirements related to indirect source review (see CAA section 110(a)(5)). Outdated registration requirements of the SIP approved rule were also removed.

The revised 45CSR13 identifies the following types of activities as being subject to the minor new source permit review requirements of 45CSR13: constructions of new non-major stationary sources, modifications of non-major stationary sources, non-major modifications to existing major sources which have not been permitted pursuant to 45CSR30, and relocations of non-major sources. Accordingly, the terms "stationary source" and "modification" are critical in defining the scope of activities which are subject to review. Both these terms are defined with emissions levels establishing size limits on what qualifies as either a "stationary source" or a "modification". [4]

---

[4] According to the rule, a "stationary source" is a source which is subject to an emissions control rule promulgated by the Commission, discharges or potentially discharges more than 6 lbs/hr of VOC or other pollutant for which the Commission has promulgated an ambient air quality standard, discharges or potentially discharges any HAP or toxic air pollutant in excess of amounts indicated in Table 45-13B, or voluntarily "opts-in". A "modification" is a physical or operational change which results in an emissions increase of 2 lbs/hr or more or 5 tons/yr of any regulated air pollutant (except for HAPs or toxic air pollutants), an increase in HAP or toxic air pollutants above levels indicated in Table 45-13B, an increase in HAP or toxic air pollutant emissions at sources which prior to the modification had the potential to emit HAP or toxic air pollutant in excess of amounts indicated in Table 45-13B, or increases emissions and the

Unless otherwise subject to a State emissions control rule, sources with emissions or potential emissions below the specified "stationary source" emissions levels are not considered to be "stationary sources". Similarly, physical or operational changes at stationary sources which result in emissions increases below the "modification" emission levels are not considered to be "modifications".

Stationary Sources

Consistent with the definition of "stationary source" in the SIP approved version of 45CSR13, West Virginia's revised minor new source permitting program considers as a "stationary source" any source which is subject to a State emissions control rule, including rules which have been specifically developed to meet national and/or state air quality standards and goals. (In West Virginia, these rules include specific requirements for indirect heat exchangers, hot mix asphalt plants, refuse combustion, manufacturing processes, meat-firing devices, sources of volatile organic compounds (VOCs), etc.). Due to the importance of ensuring that the construction, modification and operation of these sources are conducted in accordance with the State's plan for attaining and maintaining the NAAQS, West Virginia is correct in continuing to subject all such activities to minor new source permit review.

Of the sources which are not subject to specific emissions control rules, West Virginia limits the scope of minor new source permit review to those sources which emit or potentially emit 6 lb/hr or more of VOCs or any pollutant for which an ambient air quality standard has been promulgated by the Commission (SO2, PM10, NO2, CO, O3 and non-methane hydrocarbons). The 6 lb/hr limit existed in the SIP approved version of 45CSR13, and is only new for VOCs which were not regulated independently as a pollutant category under the SIP approved version of 45CSR13. West Virginia's use of a lbs/hr emission basis rather than a corresponding tons/year basis is particularly appropriate for minor source permitting programs due to the fact that many smaller sources do not operate at maximum capacity (i.e. 8760 hrs/year).

---

source opts-in.

Of the sources which are not subject to specific emissions control rules and emit hazardous or toxic air pollutants (HAPS/TAPS), West Virginia limits the scope of minor new source permit review to sources which emit or potentially emit hazardous or toxic air pollutants at or above levels specified in Table 45-13B of the SIP submittal. (Table 45-13B is reproduced below.)

TABLE 45-13B

| Hazardous/Toxic Pollutant | Potential Emission Rate ( pounds/year) | |
|---|---|---|
| Acrylonitrile | 500 | |
| Allyl Chloride | 10000 | |
| Arsenic Compounds (Inorganic) | 200 | |
| Asbestos | 14 | |
| Benzene | 1000 | |
| Beryllium | 0.8 | |
| 1,3 Butadiene | 500 | |
| Carbon Tetrachloride | 1000 | |
| Chloroform | 1000 | |
| Ethylene Dichloride | 1000 | |
| Ethylene Oxide | 500 | |
| Formaldehyde | 1000 | |
| Lead or lead compounds* | 1200 | *Lead and lead compounds are defined as |
| Mercury | 200 | HAPS/TAPS. When converted, the 12,000 |
| Methylene Chloride | 5000 | tons/year threshold equals the |
| Propylene Oxide | 5000 | 0.6 tons/year major modification |
| Trichloroethylene | 10000 | significance level for lead. |
| Vinyl Chloride | 1000 | |
| Vinylidene Chloride | 2000 | |

The SIP approved version of 45CSR13 contained no emission level cutoffs for sources of hazardous or toxic air pollutants. Although these new levels limit the scope of hazardous or toxic air pollutant sources which will be subject to minor new source permit review, the new levels are equal to or more stringent than the major modification significance levels established for such pollutants under the major source and major modification permitting programs. The rule will continue to capture the construction of many small sources of hazardous or toxic air pollutants which may or may not be otherwise subject to State emissions control rules. Other exemptions provided in the SIP approved definition of "stationary source" have been removed.

Modifications

West Virginia's revised program applies to physical or operational changes which result in emissions increases of two (2) lbs/hr or five (5) tons/year or more of any pollutant which is not a toxic or hazardous air pollutant. Although the SIP approved version of 45CSR13 did not contain any modification emissions level size cutoffs, the thresholds established for criteria pollutants are more stringent than the major source significance levels, which range from 15 tons/year (PM-10) to 100 tons/year (CO), and should capture many of the changes at stationary sources, and at major stationary sources which are not "major modifications". For sources with potential emissions of HAPS/TAPS equal to or greater than the levels specified in Table 45-13B of the SIP submittal (see above), any change which results in an emissions increase is considered to be a modification and subject to minor new source review. Changes at sources with potential emissions below the specified levels are also considered to be modifications if the emissions increase would result in total emissions at the source above the levels specified in Table 45-13B. The new levels are equal to or more stringent than major modification significance levels established under the major source and major modification permitting programs.

Regardless of the pollutants involved, the program requires all changes which result in emission increases below the modification emissions thresholds to be reported to the Chief. On a case-by-case basis, the Chief may determine that such activities must also be permitted. This notification requirement for modifications provides an additional layer of protection which will enable the Chief to determine whether small changes at sources will interfere with the attainment and maintenance of the NAAQS, or violate the control strategy and contributes to the adequacy of 45CSR13's revised approach to handling modifications. Also, the new emissions level thresholds for modifications should not adversely impact sources who rely on 45CSR13 permits to "net out" of major permitting program requirements. In cases where a source's net emissions increase is below the new 45CSR13 modification "de minimis" levels, West Virginia's major non-attainment new source review and prevention of significant deterioration programs require such source to obtain a 45CSR13 permit, or some other federally-enforceable mechanism, to codify the netting transaction for it to be creditable. In such cases, sources would have considerable incentive to utilize the "opt-in" provisions of 45CSR13 to avoid major source permitting requirements.

Similar to the SIP approved definition (and the federal definition of "major modification" in 40 CFR 51), the revised definition of "modification" precludes certain actions from being considered as modifications. However, section 2.18.d.A. newly precludes from being considered a modification the installation or replacement of air pollution control equipment if the new equipment is at least as effective as the equipment replaced and no new air pollutant is discharged from its installation. EPA believes that this exemption employs adequate safeguards for purposes of West Virginia's minor minor new source permitting program. Precluded actions 2.18.d.B - E are more stringent than the corresponding SIP approved activities (and are generally consistent with the activities precluded in the federal definition of "major modification" in 40 CFR 51.166(b)(2)(iii)).

Consistency

The revised procedures establish definitions for "major stationary source" and "major modification". Such definitions are used to establish the upper limit of the scope of the 45CSR13 program. Identical terms are used to determine applicability in West Virginia's major pre-construction permitting programs, 45CSR14 (PSD) and 45CSR19(non-attainment NSR). [5] Since the revised 45CSR13 program exempts construction and modification-related activities which are subject to either 45CSR14 or 45CSR19, it is critical that all these programs define "major stationary source" and "major modification" consistently to avoid confusion when determining which pre-construction permitting program applies in a given instance. [6] The 45CSR13

---

[5] The definition of the terms "major stationary source" and "major modification" in West Virginia's 45CSR14 (PSD) and 45CSR19 (non-attainment NSR), must be consistent with the federal definitions found in section 40 CFR 51.165 (non-attainment New Source Review(NSR)) and 51.166 (Prevention of Significant Deterioration (PSD)).

[6] The issue of consistency of terms is addressed in the proposed revisions to Title 40 of the Code of Federal Regulations (40 CFR)

definition of the term "major modification" references the meanings ascribed in 45CSR14 and 45CSR19 and thus inherently satisfies EPA's concern about definition parity. While the 45CSR13 definition of "major stationary source" is consistent with the definitions found in 45CSR14 and 45CSR19 in terms of emissions thresholds, the 45CSR13 definition does not delineate when fugitive emissions need to be included (i.e. for what types of sources) as is done in the major permit program rules. Without such a distinction, the 45CSR13 definition could be interpreted to require fugitive emissions to be included in all cases so that certain sources of fugitive emissions are "major sources" under 45CSR13 but not under 45CSR14 and 45CSR19. Such an interpretation presents a consistency problem since such sources would thus be exempt from all minor new source review requirements. To address this issue, West Virginia submitted a written clarification on September 5, 1996 indicating that the definition of "Major stationary source" in 45CSR13 will be interpreted consistent with the 45CSR14 and 45CSR19 programs as to the types of source categories which need to include fugitive emissions. Notwithstanding this clarification, EPA recommends that West Virginia instead cross-reference the identical terms in 45CSR14 and 45CSR19, similar to the approach used in the definition of "major modification". By relying on the applicable definitions of "major stationary source" and "major modification" in 45CSR14 and 45CSR19, sources will be forced to first check to see whether major pre-construction permitting program requirements apply, and if not, then look to the applicability provisions of 45CSR13. This is the proper sequence for sources to follow who are trying to determine which pre-construction permitting program is applicable for a proposed new construction, modification, or relocation. The cross-referencing approach would eliminate any potential for inconsistencies between West Virginia's major and minor new source programs with respect to applicability determinations. Also, West Virginia would not have to revise the corresponding definition in 45CSR13 each time a change is made to the definition of "major stationary source" in

---

Parts 51, 70 and 71 published in the Federal Register on August 31, 1995 (see 60 FR 45564). In this notice, EPA proposes changes which clarify that all of the terms used in §§ 51.160 - 164 shall have the same meaning as provided elsewhere in subpart I of part 51, or in the Act.

45CSR14 or 45CSR19.

*(f) Procedures must discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of this subpart.*

Although the program does not expressly discuss air quality data, dispersion, or other air quality modeling; the revisions to 45CSR13 did not change any air quality data, dispersion or modeling provisions from the SIP approved version. Under the provisions of the revised 45CSR13 program, however, the Chief is require to evaluate sources of air pollution and to issue permits for construction, modification, relocation, and operation of such sources only if such activities are in accordance with applicable emissions standards, air quality increments, the ambient air quality standards, the intent and purpose of 45CSR13, and W. Va. Code §16-20-1, et.seq. The revised 45CSR13 procedures further require the Chief to issue an order which would prevent a construction, modification, or relocation if it is determined that such proposed activity will violate applicable emissions standards, interfere with the attainment or maintenance of an applicable air quality standard, cause or contribute to a violation of an applicable air quality increment, or is otherwise inconsistent with the intent and purpose of 45CSR13 or W.Va Code § 16-20-1, et, seq. Inherently, the Chief must conduct any air quality data, dispersion, or other air quality modeling necessary to ensure these requirements are met. Except if an alternative or modified air quality model is approved pursuant to the requirements of 40 CFR Part 51, section 161(f)(2), federal rules require all applications of air quality modeling to be based on the applicable models, data bases, and other requirements specified in the appendix W of Part 51.

**§ 51.161 Public Availability of information**

*(a) Procedures must provide opportunity for public comment on information submitted by owners and operators. Public information must include permit authority's analysis of the effect of the construction or modification on ambient air quality, including the permitting authorities proposed approval or disapproval.*

The revised procedures require the Chief to maintain for public review a permit application list of proposed new stationary sources, source modifications, or relocations. The list shall contain the name of the applicant, the type and location of the source, and the proposed start-up date. A Class I legal advertisement containing, at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants discharged, the nature of the permit being sought and the proposed start-up date, will be placed in a newspaper of general circulation in the area where the source is or will be located. The procedures also provide an opportunity for the public to submit written comments relating to the permit application. Except for the new requirements for the legal advertisement to include information about the type and amount of air pollutants to be discharged and the nature of the permit being sought, the provisions relating to public comment on permit application information have not been changed from the SIP approved version of 45CSR13.

The revisions to 45CSR13 include new provisions which require the Chief to prepare a fact sheet or determination supporting his or her stated intent to issue a permit and transmit it to EPA and any interested party prior to issuance of any permit. The revised procedures also require the Chief to place a Class I legal advertisement summarizing his or her findings and provide notice of the availability for public review of the draft permit and fact sheet.

*(b) Opportunity for public comment shall include:*

*(1) Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of the permitting authorities analysis of the effect on air quality.*

Similar to the SIP approved version of 45CSR13, the revised procedures require the Chief to maintain for public review a permit application list of proposed new stationary sources, source modifications, relocations or operating permits. The list shall contain the name of the applicant, the type and location of the source, and the proposed start-up date (if applicable). The revised program newly requires the Chief to prepare a fact sheet or determination supporting of his or her intent to issue a permit. The Chief is required to maintain the fact sheet or determination and draft permit for public review. However, a copy of the fact sheet or determination and draft permit will be transmitted to EPA and any other party upon request. Similar to SIP approved version of 45CSR13, the revised program does not require permit application information or the Chief's analysis to be available for inspection in at least one location in the area affected. No changes to the provisions regarding the location of information available for public inspection have been made from the SIP approved version of 45CSR13.

*(2) A 30-day period for submittal of public comment; and*

Similar to the SIP approved version of 45CSR13, The public will be given at least thirty (30) days to submit written comments related to the permit application. Under the SIP approved version of 45CSR13, the public was granted thirty (30) days for constructions and modifications, but only twenty-five days for relocations. The revised 45CSR13 provides the public with a new additional thirty (30) days to comment on the draft permit and associated fact sheet or determination.

The revised procedures also allow the Chief to issue temporary permits which authorize experimental product or process changes for up to six (6) months (which may be extended in writing up to twelve (12) additional months). In acting to issue or deny an application for a temporary permit, the Chief is required to provide a fifteen (15) day public comment period on the temporary permit application.

EPA recognizes that states should have the ability to limit the public participation for certain minor new source permitting actions. Since states can exempt certain activities from minor NSR based on de minimis or administrative necessity grounds in accordance with the criteria set forth in *Alabama Power Co. V. Costle*, 636 F.2d 323(D.C. Cir. 1979), it follows that states should also be able to provide partial or full exemption from the full public process requirements of 51.160(e). Any such limitation on the full public participation requirements of 51.160(e), however, should be applied consistent with the environmental significance of the activity. [7] Although temporary permits are issued only in specific instances and for limited periods of time, such conditions do not characterize situations of an inherently less environmentally significant nature.

*(3) A notice by prominent advertisement in the area affected of the location of the source information and the permitting authorities analysis of the effect on air quality.*

Similar to the SIP approved version of 45CSR13, the revised procedures require the applicant to place a Class I legal advertisement in a newspaper of general circulation in the area where the source is or will be located. Such advertisement is to be placed at the same time that the application is filed with the Chief. The revised procedures require the advertisement to 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). Except for the new requirements for the legal advertisement to include information about the type and amount of air pollutants to be discharged and the nature of the permit being sought, the provisions relating to public notice of permit application information have not changed from the SIP approved version of 45CSR13. Similar to the SIP approved provisions, the revised procedures do not explicitly require the legal advertisement to specify the location of the permit application information.

The revised procedures newly require the Chief to publish a Class I legal advertisement in a newspaper of general circulation in the area of the proposed new source or modification which will notify the public of the Chief's intent to issue a permit. The legal advertisement will include a summary of the Chief's findings and provide notice of the availability for public review of the draft permit and fact sheet.

---

[7] On August 31, 1995, EPA proposed a new paragraph (c)at § 51.161 to clarify that, except for certain specified activities; state programs may vary procedures for, and timing of, public review in light of the environmental significance of the activity (see 60 FR 45564).

*(c) Where the 30-day comment period would conflict with existing requirements for acting on requests for permission to construct or modify, the permitting authority may submit for approval a comment period which is consistent with such requirements.*

This "grand fathering" provision, adopted in 1973 to avoid undue disruption to existing state programs, is not applicable to West Virginia's revised 45CSR13 SIP submittal.[8]

*(d) A copy of the notice in (b)(3) must be sent to EPA, and to all other air pollution control agencies having jurisdiction in the region in which such new or modified stationary source will be located. Notice must also be sent to any other agency in the region having responsibility for implementing the procedures required by this subpart. For lead, a copy of the notice is required for all point sources (defined in §51.100(k)(2)).*

Concurrent with placing the Class I legal advertisement, the revised procedures newly require the Chief to send EPA the fact sheet or determination in support of his or her stated intent to issue such permit along with a draft copy of the permit. There are no other air pollution control agencies which have jurisdiction in the region. Similar to the SIP approved version of 45CSR13, the revised procedures do not require the Chief to automatically send a copy of the notice (and/or the above mentioned information) to other agencies in the region. However, the revised procedures newly require the Chief to send the fact sheet (or determination) and a draft copy of the permit to any interested party on request. [9] The above discussion applies to all lead "point sources" as defined in Part 51, section 100(k)(2).

---

[8] On August 31, 1995, EPA proposed to delete paragraph § 51.161(c). (see 60 FR 45564).

[9] On August 31, 1995, EPA proposed changes to part 51, section 161(d) which would require the availability of the public notice, rather than copies to be provided to EPA and the other agencies (see 60 FR 45564). If finalized, this change will allow permitting authorities the opportunity to provide the required information through other avenues such as computer bulletin boards instead of solely by hard copy.

**§ 51.162 Identification of responsible agency**

*Plan must identify agency responsible for meeting the requirements of this subpart.*

The revised plan identifies the Chief of the West Virginia Office of Air Quality as responsible for issuing permits pursuant to 45CSR13 in the entire State of West Virginia. The program defines "Chief of Air Quality" or "Chief" to mean the chief of the Office of Air Quality or his or her designated representative appointed by the director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq. The SIP approved version of 45CSR13 identified the "Director" of the West Virginia Air Pollution Control Commission as the responsible entity for issuing permits.

**§ 51.163 Administrative procedures**

*Plan must include administrative procedures, which will be followed in making the determination in paragraph (a) of 51.160.*

The revised 45CSR13 regulations establish administrative procedures to be followed in determining whether a construction or modification of a stationary source will result in a violation of the control strategy or will interfere with the attainment or maintainment of a national standard.

In addition to the procedures discussed above, the revisions to 45CSR13 include new administrative provisions for issuing general permits authorizing construction or relocation of a category of sources by the same operator, or involving the same or similar precesses or pollutants, in accordance with the terms and conditions specified in the general permit. The revised 45CSR13 also establishes new provisions allowing for permit transfers after the Chief determines that the proposed permittee has all necessary permit responsibility. The new permittee must certify that a complete copy of the permit application and permit has been reviewed, and that all terms and conditions in the permit and operating parameters contained in the application will be adhered to. The Chief must also be provided a written agreement between the existing and new permittee with regard to the specific transfer date and the extent of permit responsibility between them. The revised 45CSR13 also includes a new provision for permit cancellation requiring permit holders to submit requests for cancellation in writing. The cancellation provision specifies that no permit cancellation shall become effective until the permittee and USEPA have been given at least 30 days written notice. The cancellation provision further specifies that permit cancellation will not excuse any violation of permit terms or conditions prior to the effective date of the permit cancellation. Other provisions in the revised 45CSR13 are substantively unchanged from the SIP-approved version of the rule.

**§ 51. 164 Stack height procedures**

*Procedures must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in § 51.118(b). Such procedures must provide that before a State issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by §51.100(ii)(1) and (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it.*

Similar to the SIP approved version of 45CSR13, the revised procedures do not specifically include provisions pertaining to stack height. However, the procedures do specify that possession of a permit does not relieve any person of the responsibility of complying with any and all rules of the Commission or W.Va. code §16-20-1, et.seq. This includes a source's responsibility of complying with West Virginia's SIP approved 45CSR20 - "Good Engineering Practice as Applicable to Stack Heights" approved into the SIP on April 19, 1994 (see 59 FR 18490).

**"Federal Enforceability" Criteria**

On June 28, 1989 EPA amended the definition of "federally enforceable" to clarify that terms and conditions contained in state-issued operating permits are federally enforceable provided that the state's operating permits program is approved into the SIP under section 110 of the CAA as meeting certain conditions, and provided that the permit conforms to the requirements of the approved program. The conditions for EPA approval discussed in the June 28, 1989 notice establishes five criteria for approving a state operating permit program. See 54 FR 27274-27286. Each of the five criteria for approval of a state's program for the issuance of federally enforceable operating permits and how West Virginia's August 26, 1994 submittal satisfies those criteria are discussed below:

***Criterion 1.*** *The state's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision:*

On August 26, 1994, West Virginia submitted a complete SIP revision request to EPA consisting of 45CSR13 -"Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluations". 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", submitted to EPA on June 17, 1974 and approved into the West Virginia SIP on November 15, 1975. Approval of the August 26, 1994 submittal into the West Virginia SIP is the subject of this review. Such an approval would provide the legal support for the operating permit program necessary to satisfy the first criterion.

***Criterion 2.*** *The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA:*

Regulation 45CSR13 contains several legally binding regulatory provisions which serve to satisfy this criterion. First, in defining the term "Existing stationary source operating permit", the regulation specifies that such permits establish "...enforceable emissions rates, operating conditions, and compliance determination procedures for that source based on applicable rules and terms agreed to by the Chief and the owner or operator." By using the adjective "enforceable", the definition asserts the legal obligation of existing stationary source operating permit holders to adhere to terms and limits of such permits. (The term "Enforceable" is defined as enforceable by the Chief and U.S. EPA unless specifically designated to mean otherwise in this rule.) The obligation of permit holders to adhere to permit terms is also supported by section 4.4 which specifies that the required responsible official signature on a permit application constitutes an agreement that the applicant assumes responsibility for the operation of the source in accordance with the permit application, permit, applicable rules promulgated by the Commission, and W. Va Code section 16-20-1, et seq. Section 8.3 provides the Chief with the authority to suspend or revoke a permit if the conditions of the permit are not adhered to.

In accordance with the latter part of the second approval criterion, states and sources should be placed on notice that EPA may deem 45CSR13 permits which do not conform to the operating permit program and the requirements of EPA's underlying regulations not to be "federally enforceable". Based on this interpretation and the provisions of West Virginia's program discussed above, EPA finds that the second criterion for approval of an operating permit program has been met.

***Criterion 3.*** *The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable" (e.g. standards established under sections 111 and 112 of the Clean Air Act):*

Several provisions of West Virginia's 45CSR13 program ensure that permit requirements will be no less stringent than other applicable federally enforceable provisions. First, section 4.3 clarifies that existing stationary source operating permits are to be issued in accordance with all applicable rules of the Commission. Section 4.4 specifies that the required responsible official signature on a permit application constitutes an agreement that the applicant assumes responsibility for the operation of the source in accordance with the permit application, permit, applicable rules promulgated by the Commission, and W. Va Code section 16-20-1, et seq. Section 4.6 specifies that the Chief will 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 Commission. Finally, section 8.4 specifies that possession of a permit does not relieve any person of the responsibility of complying with any and all rules of the Commission or W.Va Code section 16-20-1 et seq.. The 45CSR13 rule does not include provisions authorizing the issuance of permits which waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "federally enforceable". For these reasons, EPA has determined that the state's 45CSR13 program meets the requirements of criterion 3.

***Criterion 4****. The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter.*

Section 4.9 specifically requires the Chief to impose, or incorporate, consistent with all applicable rules, enforcement conditions which assure that all emission limitations contained within the permit are quantifiable, permanent and practically enforceable. In reality, however, the requirement for permit provisions to be quantifiable and practically enforceable must be satisfied on a permit-by-permit basis. Individual permits which contain terms and conditions which are not quantifiable or practically enforceable, may be deemed by EPA not to be "federally enforceable". Regarding "permanence", section 11.3 of West Virginia's rule does provide that the issuance of a Title V operating permit will operate to revoke an existing stationary source operating permit. Since many of the existing stationary source operating permits issued will be to sources which are seeking to avoid Title V permitting obligations, this "automatic revocation" provision may never be triggered. However, some sources may rely on limitations on potential emissions established in existing stationary source operating permits to avoid other "major source" program requirements such as major NSR, PSD, or Title III MACT standards and will trigger the "automatic revocation" provisions. For these sources, the superseding Title V permit would need to address such limitations as applicable requirements (similar to how minor NSR permit conditions are addressed in the Title V permit), or else place the source at risk for violating applicable "major source" program requirements. It should be clear that EPA does not interpret the "permanence" requirement of this criterion in such a way which would prohibit permit modifications, reissuance, or revocations, for these elements are fundamental in all air permit programs. Instead, permanence is considered in terms of provisions having continuing mandates (i.e. that EPA has assurance that the provisions are in effect through the life of the permit and that any reissued permit will continue the provisions in effect.) EPA is assured that sources that obtain limitations on potential emissions in existing stationary source operating permits will keep such limitations in effect, so as to never be in violation of "major source" permitting or other program requirements. For these reasons, West Virginia's program satisfies the fourth criterion.

***Criterion 5.*** *The permits are issued subject to public participation. This means that the state agrees, as part of its program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process must also provide for an opportunity for public comment on the permit applications prior to the issuance of the final permit.*

The process for issuing 45CSR13 existing stationary source operating permits is identical to the process for issuing 45CSR13 construction or modification permits evaluated above under the heading "§ 51.161 Public Availability of Information." These procedures require public notice of the intent to issue a final permit and the existence of a proposed permit for review, submission to EPA of the proposed permit, and an opportunity for public comment on the permit application prior to the issuance of the final permit. Although the rule does not specifically require the Chief to automatically submit a copy of the final permit to EPA (as is required for proposed permits), copies of final permits will be available to EPA and the public pursuant to the State Freedom of Information Act.

**<u>Federally Enforceable Permit Conditions for Hazardous Air Pollutants</u>**

EPA has determined that the five approval criteria for approving FESOPP programs into the SIP, as specified in the June 28, 1989 Federal Register notice, are also appropriate for evaluating and approving the programs under section 112(l). Although the June 28, 1989 notice did not address HAPs, this is because it was written prior to the 1990 amendments to section 112 of the CAA. EPA believes that the use of the same criteria for evaluating programs for both criteria and hazardous pollutants is appropriate since the approval criteria are not based or dependent on pollutant, but on general program elements which must be present for the program to be deemed minimally approvable by EPA. In addition to meeting the criteria discussed above, however, state programs must meet the statutory criteria for approval under section 112(l)(5) of the CAA. This section allows EPA to approve a program only if it: (1) contains adequate authority to assure compliance with any Section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with Section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA. An analysis of West Virginia' SIP submittal against the June 28, 1989 criteria is detailed above. Each of the four statutory criteria for approval under section 112(l)(5) and how West Virginia's August 26, 1994 submittal satisfies those criteria are discussed below:

***Criterion 1.*** *The program contains adequate authority to assure compliance with any section 112 standard or requirement.*

Although not specifically designed to do so, EPA believes that West Virginia's 45CSR13 program contains adequate authority to assure compliance with section 112 requirements. The program specifically prohibits the Chief from issuing permits for construction, modification, or relocation if such action would violate applicable emissions standards. The program also prohibits the Chief from issuing existing stationary source operating permits if the operating provisions requested by the source do not comply with applicable rules of the Commission (or if acceptable compliance terms cannot be incorporated). West Virginia has adopted specific regulations which incorporate federal National Emissions Standards for Hazardous Air Pollutants (NESHAPS) promulgated at 40 CFR Parts 61 and 63, and pursuant to section 112, by reference. West Virginia adopts new EPA promulgated section 112 requirements into State regulations on an annual basis. As discussed above, the Chief is prohibited from issuing any permit which would violate such rules, or West Virginia's state-enforceable only air toxics regulation.

In addition to the nineteen (19) hazardous/toxic pollutants specified in Table 45-13B of West Virginia's SIP submittal, the 45CSR13 program includes in the definition of "regulated air pollutant" "..any other pollutants subject to an emissions standard promulgated by the Commission including mineral acids in 45CSR7." This provision authorizes 45CSR13 permits to regulate pollutants which are subject to section 112 emissions standards promulgated 40 CFR Parts 61 and 63 which have been adopted into West Virginia's regulations. Finally, in a letter dated September 5, 1996, West Virginia specified that "...the 45CSR13 program has the authority to regulate sources of hazardous air pollutants in a manner which is consistent with the requirements of section 112 of the Clean Air Act."

**Criterion 2.** *The program must have adequate resources.*

Regarding the requirement for adequate resources, West Virginia has committed, in writing, in its Section 105 grant agreement with EPA Region III to provide adequate resources for all air program activities, including the issuance of 45CSR13 permits. Further, West Virginia's successful administration of a 45CSR13 new source review program since the early 1970's further evidences the State's ability to adequately administer and fund this program. Finally, West Virginia has included in its air quality regulations under 45CSR22, provisions for the collection of fees from sources applying for construction, modification, or relocation permits. The applicable provisions of 45CSR22 require subject sources to pay an application fee of $1,000, in addition to other fees based on the specific types of requirements the applicant is subject to. Thus, EPA believes that West Virginia has adequate resources to support the 45CSR13 programs for HAPs, and will monitor West Virginia's implementation of the program to assure that adequate resources continue to be available. In a letter dated September 5, 1996, West Virginia specified that "...[West Virginia] will continue to provide adequate resources to administer the 45CSR13 program, in part, through resources generated by the 45CSR22 'Air Quality Management Fee Program'".

**Criterion 3.** *The program must provide for an expeditious schedule* *for assuring compliance with Section 112 requirements.*

EPA also believes that West Virginia's 45CSR13 program provides for an expeditious schedule for assuring compliance with section 112 requirements. A source seeking a voluntary limit on its potential to emit is probably doing so to avoid a federal requirement applicable on a particular date. Nothing in West Virginia's 45CSR13 program would allow a source to avoid or delay compliance with the federal section 112 requirement if it should fail to obtain an appropriate limit on potential HAP emissions by the relevant deadline.

**Criterion 4.** *The program is otherwise likely to satisfy the objectives of the CAA.*

EPA believes it is consistent with the intent of section 112 of the CAA for States to provide a mechanism through which sources may avoid classification as major sources by obtaining limits on potential emissions.

## IV. Conclusion

Based on the above analysis, EPA has determined that most of the changes from the SIP approved version of 45CSR13 pertaining to minor new source review, and all of the new provisions pertaining to the issuance of existing stationary source operating permits, meet EPA's criteria for approval as a revision to the West Virginia SIP. However, the exemption of sources which have been issued Title V permits from minor new source review does not comport with the federal requirements of 40 CFR § 51.160. Also, the new provisions related to issuing temporary construction or modifications permits do not satisfy the federal requirements for public participation of 40 CFR §51.161.

The approvability of West Virginia's revised 45CSR13 SIP submittal is determined by evaluating the changes from the SIP approved version only. However, the analysis revealed deviations from EPA's 40 CFR Part 51 regulations which were "carried-over" from the SIP approved rule. Independent of this rulemaking action and consistent with the impending revisions to the 40 CFR Part 51 regulations, EPA will work with West Virginia to address these deviations.

EPA has also determined that the revisions to 45CSR13 meet the criteria for approval for federally enforceable state operating permit programs and for approval under section 112(l) of the CAA.

## V. Recommended Agency Action

Based on the above conclusions and the significant level of interest displayed by commenters at the State level, this SIP revision package should be handled as a proposed partial approval/partial disapproval action, with provisions for a 30-day public comment period. Such an action will enable EPA to approve and make federally enforceable the many updates and improvements from the SIP approved version of the program, and at the same time prevent serious relaxations of the SIP related to the program's scope and public participation requirements. Further, this approach appears to be consistent with Bethlehem Steel V. Gorsuch, 742 F.2d 1028 (7th Cir. 1984) since both the exemption for Title V sources and the provisions authorizing temporary source permitting are not part of the SIP approved version of 45CSR13.[10] Approval of the existing stationary source operating permit program provisions into the SIP will provide existing sources in West Virginia with a vehicle to become "synthetic minors".

EPA should also propose approval under section 112(l) of the CAA. Approval under section 112(l) will enable 45CSR13 to establish permit terms relating to HAPs which are federally enforceable. Permits may also be used to limit a source's potential emissions allowing sources of HAPs to become "synthetic minors".

Sequential processing will allow the public an adequate opportunity to comment on EPA's analysis and proposed action.

---

[10] In Bethlehem, the court held that EPA could not make the SIP more stringent than was intended by state under the guise of "partial approval," without following procedures of Clean Air Act required for promulgating its own more stringent regulation. However, the court clarified that EPA is able, in acting on single regulation, to approve in part and disapprove in part if the effect is to prevent the state from weakening its previous (SIP) regulation.

# Division of Environmental Protection

Public Hearing: OAQ Rules 45CSR8, 45CSR9, 45CSR13 & 45CSR24 Time/Date: Oct. 12, 1999 6:00 pm

| | NAME | ADDRESS | COMMENT YES | COMMENT NO |
|---|---|---|---|---|
| 1. | Jack L Worstell | UCC South Charleston Plant | | ✓ |
| 2. | Mary Ellen O'Farrell | 1010 Valley Rd. Chas. WV 25302 | X | |
| 3. | Deirdre L. Halley | ~~[illegible]~~ 302 Woodbridge Dr Chas. 25311 | X | |
| 4. | Mary Anne Maul | 1425 Quarrier St. #2 Chas 25301-3009 | ✓ | |
| 5. | ~~[illegible]~~ | | | |
| 6. | Tim Mallan | AEP-WV 313 VA. ST. E. Charleston | | ✓ |
| 7. | Darrell Bollier | GE Plastics PO Box 68 Washington WV 26181 | | ✓ |
| 8. | Ron Nixon | WV-DEP #10 McJunkin Rd, Nitro | | |
| 9. | Jeri Hunt | 412 39th St #201 Chas WV 25304 | ✓ | |
| 10. | Pete Hart | " " | | |
| 11. | Tony Bevenng | DEP-OAQ | | ✓ |
| 12. | Rick Wilson | MSES Consultants, PO 190, Clarksburg WV 26302 | | ✓ |
| 13. | Debbie Powell | Shell Chemical State Rt. 2 Apple Grove, WV 25502 | | ✓ |
| 14. | Penny Bryant | 1544 Lee Street Charleston WV 25311 | ✓ | |
| 15. | Denise Poole | 103 Oakland Ave - Huntington WV 25705 | ✓ | |

**ORIGINAL**

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 13 " **Permits for Construction, Modification, Relocation and Operation of Stationary Source of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation"**

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Water Resources', Conference Room, 1201 Greenbrier Street, East, Charleston, West Virginia, 25305, commencing at 6:04 p.m., on the 12th day of October, 1999, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(304) 984-2300 or 540-8179

P R O C E E D I N G S

MS. CHANDLER: This public hearing will now come to order on this 12th day of October, 1999 at the West Virginia Division of Environmental Protection, Office of Water Resources' conference room located at 1201 Greenbrier Street, Charleston, West Virginia.

The purpose of the public hearing is to receive comments on the proposed rules filed in the Secretary of State's Office on September 1st and September 8, 1999 and noticed in the State Register on September 3rd and September 10, 1999. The proposed legislative rules are 45CSR8, 45CSR9, 45CSR13, and 45SCR24. The rules were noticed in a Class I legal advertisement in both the Charleston Daily Mail and Charleston Gazette, and notice was also sent to various individuals and organizations.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code and Section 110 of the Clean Air Act.

My name is Jeanne Chandler of the Public Information Office of the West Virginia Division of Environmental Protection. I will be the moderator for these proceedings this evening.

In order to obtain separate transcripts for each of the rules, the hearing procedure this evening will be to introduce each rule individually, allow time for oral comments and close the hearing for that particular rule. Written comments for any rule may be submitted at the end of this public hearing tonight. For those of you wishing to make oral comments, a sign-up sheet is in the back and please, sign up now, before I take it up. Please limit your comments to five minutes. Your comments will be made a part of the rulemaking record.

The court reporter is Ms. Missy L. Young, if anyone desires a transcript of this proceeding, please contact Ms. Young at 984-2300.

**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".**

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.

The purpose of 45CSR13 is to establish permitting requirements as stated above. 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. 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.

The floor is now open for public comment. Please, identify yourself and affiliation, if any, prior to making your comments. Mary Ellen O'Farrell?

MS. O'FARRELL: Good evening. My name is Mary Ellen O'Farrell, and I'm here representing the West Virginia Environmental Council. As a grassroots environmental activist, a registered nurse, a West Virginia citizen and a member of the Reg 13 rewrite consensus group, I appreciate the opportunity to speak here at this public hearing this evening.

It is indeed fortunate for West Virginia and her citizens that this rewrite process was undertaken as a consensus stakeholders process. It could have been otherwise and we would all have been the worse for it. While the meetings themselves were often long contentious, frustrating and fatiguing, they offered participants many opportunities to help shape the health, and indeed, the future of our home state, and this was quite worthwhile.

Because what is at issue here is the health of our community, of our children and of our state, itself. Although the finished reg, as it stands, is certainly less than perfect. The West Virginia Environmental Council stands behind it as a consensus document. Areas dealing with public participation and notification and pre-permitting construction activity are sources of dissatisfaction and disappointment for us. But nevertheless, we will not withdraw our indorsement of this reg.

Industry does not need, and should not demand, special favors in regard to pre-permitting construction activities, nor should legal adds be regarded as adequate notice to ordinary citizens. These resources and opportunities for participation in these processes are much more limited than those, say, of such organizations as the West Virginia Manufactures Association.

In light of the problems still living within this reg, I am looking forward to the establishment of the citizens advisory council to the Office of Air Quality, to help minimize future bamboozlement of citizens when issues of air quality and relevant permitting activities arise. And I wish to advance proposals here this evening for legal and technical advisors to be made available to citizens at no cost to these citizens to assist them through out these arduous processes.

Thank you very much for this opportunity to speak here this evening.

MS. CHANDLER: Thank you, Ms. O'Farrell. Deirdra Halley?

MS. HALLEY: Good evening. My name is Deirdra Halley, and I am the legislative director of the League of Women Voters of West Virginia. I have had the distinctive honor and privilege of being a part of the stakeholders group, that has reviewed and redrafted some of the air quality regulations being presented to the legislature. The League of Women Voters of the United States has a long and distinguished history of active participation in the framing and implementation of the Clean Air Act. The League fully supports the regulation of pollution sources by control and penalties. We support inspection and monitoring, full disclosure of pollution data and incentives for sources to accelerate pollution controls.

The League believes that an effective regulatory agency needs a vigorous enforcement mechanisms and with sanctions for states and localities that do not comply with federal standards and substantial fines for such noncompliance.

About ten months ago I walked into my first OAQ meeting and I was surprised to discover that I was one of very few people there representing the public. I will admit, and I am sure that my colleagues in the stakeholder group, will agree that the many, many hours, that we spent in meetings that were far from exciting, but were a very necessary task, the results at times, but we all stuck it out.

At this time I would like to take a moment to publicly thank the director of OAQ, and especially Terry Poling and his assistants. They could not have been more helpful or more pleasant to work with. The agency provided us with special educational sessions, materials and answered any and all questions for as long as it took to make me understand the details of regulatory rules and how we could make them work for everyones benefit. I was very impressed to observe that the people who work for DEP, protecting our air quality truly care about what they are doing. And they endeavor to be fair and impartial in enforcing the rules to the benefit of all West Virginians.

I believe that the new proposed Reg 13 is an overall improvement over the existing rule. Is it perfect? Probably not. But we did enhance public notification and in turn encourage participation in the regulatory process. The proposed rule allowed companies to so more preconstruction and modification than the existing rule and I feel that this may prove to have been a mistake, because of the inevitable equity argument that will be used in court if a permit is denied. On the other hand, we are encouraging the addition of pollution controls and allowing administrative updates to facilitate permit changes for industry.

I am sure that the reps from industry will freely admit that they didn't get all of their proposals in the new rule either. And environmental groups will probably speak against Reg 13 because it does allow some increases in threshold levels. Completed work product that you see before you today is the result of nearly a year of study, discussion and compromise between industry, citizens groups and the Department of Environmental Protection, Office of Air Quality.

The League will continue to participate in stakeholder groups with DEP. We will actively lobby our legislature to improve the revisions made to all regulations presented for review in the upcoming secession and we will make sure that our elected officials know, what a fine group of people we have protecting the quality of our air.

If you have any doubt of the importance of the work done by the regulatory community, consider this, you can buy bottled water, but everyone has to the breath air or run around with an oxygen tanks on their backs and look really foolish. It's been a pleasure for me to get to know the folks at OAQ and I look forward to a continued productive relationship between the League of Women Voters and the Department of Environmental Protection.

Thank you, for allowing me to make my comments and I have two letters for the official record. One from myself and one from the national president of the League of Women Voters.

MS. CHANDLER: Thank you, Ms. Halley. I am sorry, I mispronounced your name. Mary Anne Maul.

MS. MAUL: I am representing the West Virginia League of Women Voters and I would like address the specific precess of regulator negotiations conducted for Reg 13.

As I understand it this is the first time, in this group of four regulations, that citizens represented and participated in an effort to develop a proposed rule. To it's credit, the agency proposed and implemented several innovative techniques to make the meetings work. However procedural misunderstandings may have undermined the prospect of the three party deal. There were four rules that we attempted to go by; rule number one, all changes should be written, rule number two, all reasons should support change. As it turned out, because these rules were consistently enforce and followed. Environmental participants never would have compromised to the extent that they did had we realized that the industry would retract it's concessions.

Rule number three, the agency should write it's own rules. And rule number four, the entire package should be reviewed before finalizing the proposal. An example of the importance of this is that two provisions taken together gives the big picture. The ability of industry to build, a plan before getting a permit and the edibility of the public to find out about it unless it is a very large application means this. A plant can already be built before the public finds out about it, but the company can go to court and get the permit because it's been built.

Facilitation is an art encompassing many values, including fairness and firmness. In these regards we have not quarrel how we were treated. And we appreciate the added cordiality and the humor. However, especially when lawyers are advocates and citizens seem to have a voice, special technics have to be applied to balance the players. Either the agency needs to acquire training facilitation or engage an outside facilitator that has these skills.

So for future regulator negotiations ground rules need to be enforced and obeyed. Special facilitation technics needs to level the playing field and stakeholder education should continue to be available on technical matters to inform the public. Thank you.

MS. CHANDLER: Thank you, Ms. Maul. Jeri Hunt.

MS. HUNT: My name is Jeri Hunt and I am -- I live in the Kanawha Valley and I am not really here with any group, I just -- I am here representing everyone I know who is concerned about our deteriorated air. And I am not a technical expert, but I have learned enough to know, and I have learned it in a very short time, that there were days last summer when our air was worse than the air in the Los Angeles basin, which is astounding to me because we are such a small city.

Elevated levels of particulate matter aggravate asthma, and asthma is a big problem in the Kanawha Valley, especially in children. Also that parts of the state are about to be declared out of attainment for ozone. And I understand you make decisions that you have to weigh health costs with economic benefits that --

I think we lose all the way around.

We are already suffering health wise for our poor air and I don't see that this creates a very good climate for new business. Why would anybody want to move here, to a state with a reputation for bad air, let alone families. I don't think anyone here would intentionally move to a unhealthy community. I just think we need to give everybody the choice to live in a healthy environment. Thank you.

MS. CHANDLER: Thank you, Ms. Hunt. Perry Bryant.

MR. BRYANT: Thank you, my name is Perry Bryant and I, along with my wife and occasionally my son, live in the Kanawha Valley and we breath the air that we are talking about tonight. I guess, there are a couple of things that I would like to say, one, I would like to express my appreciation for all of the work that the League of Women Voters has done on behalf of the citizens of the Kanawha Valley and West Virginia's air supply in general.

Deirdra Halley, Mary Anne Maul and Mary Ellen O'Farrell have done and outstanding job. I guess, while I continue to have some real concerns, particularly about the construction prior to a permitting process being adopted and I would urge the agency to monitor that process very closely so that industry does not abuse that and end up with a facility that you would not have permitted to begin with. But since it has been constructed it becomes a fait accompli and that for intent and purposes the agency is blackmailed by having to permit a facility again, that they would not have done originally.

But given the fact that these women have done the hard work and have been there and participated in these proceeding, day in and day out, on behalf of all of the citizens of West Virginia, I can't stand up here and say that their work product is not adequate. I can only say -- may I express my appreciation and support for the regulations with the caveat that I hope the agency will monitor, a; public participation and ability for the public to have meaningful input into the permitting process. And, b; watch very closely those sites that are constructed prior to the permitting process. With those caveats, I would like to support Regulation 13. Thank you.

MS. CHANDLER: Thank you, Mr. Bryant. Denise Poole.

MS. POOLE: I am Denise Poole, and again

I representing the Ohio Valley Environmental Coalition, other wise known as OVEC. And I attended a lot of these meetings in the beginning, probably the first seven or eight months and tried to keep up to snuff as much as I could thorough my end of the table there.

I found it, yes, to be grueling. We were presented with draft after draft proposed by the regulated industry and consistently consulted our experts and looked over a voluminous list that industry considered, not only minor but not even in need of a permit. We were the ones, and the only ones consistently asking the question, What about our health? What are the impacts of what we are doing here? As far as Reg 13, as it stands right now, I am greatly concerned about the same things I was initially.

I went there wondering what is this process? What are they wanting to do with these permits? Why do they feel like they don't need them? And I came back with the same answer as to operate, not only as usual, but have the standards relaxed. I think that is going in the wrong direction. I am particularly concerned about the public notification. We tried from the beginning to have better public notification and I don't think that the average citizen looks at those legal adds.

They gloss right over it. They need more -- the average citizen wants cleaner air.

The allowance of the administrative update, there is a lot of latitude there and industry pushed real hard for that. Increases in the threshold levels, that's very disturbing. I was opposed to that all along and it's in there.

But I am grateful for the citizens advisory commission and I do think that, from here on out, none of us are going away and we will continue to have input. So I don't whole heartedly support the whole package, I think is very, very weak and again I think that it does mean that the other direction. And I really can't wait for the day that we stop talking about, less permanence, less steps to take, because every source, minor or not, is still the source, and start thinking in terms of zero emissions.

We live a real chemical soup here folks and every emission adds a little spice to that. I am just greatly disturbed by that and I hope that in the future we can continue to go in a different direction. Thanks to all of the stakeholders.

MS. CHANDLER: Thank you, Ms. Poole. Robin Godfrey.

MR. GODFREY: I am Robin Godfrey. I live on the west side, I am a board member of the Citizens Action Group, but my comments are my own tonight. I was born and raised here in this valley. I want to thank, in particular, my wife, Mary Ellen O'Farrell, for the work you have done on this and Mary Anne Maul, for the courage and leadership that you have shown in this effort. Never mind all of the laundry that I did while you were at the meetings. As well as, Deirdra Halley and Connie Lewis. I also want to thank, in a sense, this reg rewrite, although, frankly, I can't help but be suspicious and grab my billfold when I first heard about it, because it has really brought to the fore, the importance of air quality and the lack of it in this valley. Which got a big play but tragically, because of the tragic event in Columbine, was submerged the next day, because there was a large article in the Gazette, just before the Columbine disaster, about particulate matter in this valley.

I have two concerns, that I practice, I am a lawyer here, in solo practice, and that is the idea of adequate notice, which involves public involvement. In the environmental community we are really getting use to the idea of these little teeny adds running one time and the proponents of something, probably bad, going to happen to the public at the publics expense. With the public, sometimes, footing the bill, with their money or their health or both.

Is that "Hey, you complied with the law". Well, those old laws aren't good enough. I think that Governor Underwood unwittingly said it best when he complained that, everything was more difficult when it was made public. Kind of fits, distinctly, I thought.

My other concern is public health and when we look at these regs, I think you have to ask the big question, Is the air going to be clear or is it going to be dirtier? If it's going to be dirtier, then as I heard women shouting at the referee at Stonewall Jackson Junior High, "You should be ashamed of yourselves". We should be ashamed of ourselves. It is a great disservice to the long term interests of West Virginia, of which I think most industry representatives are not, at all, concerned about. Their are concerned about the bucks today.

If the air is going to be dirtier, and it's already dirty enough, if you can say such a thing. As Jeri Hunt pointed out, in some incidents, our air is dirtier than Los Angeles, then it is really economic development in reverse. And so we don't want, down the road, to be like Alec Guinness at the end of the Bridge of the River Qui, when we really say to ourselves, What have we done. Thank you.

MS. CHANDLER: Thank you, Mr. Godfrey. Norm Steenstra.

MR. STEENSTRA: I am Norm Steenstra, I am the executive director of the West Virginia Citizen Action Group. I just have a couple of comments. The most remarkable thing that we have heard and will hear again, is the time and effort that several individuals put into this. I have never been in a situation like that, in a meeting, where it was so remarkable that a group of citizens sacrificed so much, I think for the public good and I think all sides, if this is indeed a conclusive process, needs to recognize this. It's a shame there is no press here, the world is going to little note, or long remember your efforts in this thing. But for almost a year it seems like you have inspired all of us in staying with it, like a snapping turtle and I want to applaud -- well, you know, this is not the most glamorous fun thing to do and I think, from the environmental community, and I hope the regulatory community, you appreciate that because it is all done on their time and all done with no access outside of DEP to technical expertise.

One thing that I want to urge is, I have been through these inclusive processes before, sometimes they work, sometimes they don't. Always at the end somebody bolts, or like a thief in the night, the last day before the secession starts and the rules and regulations committee, they set rules, somebody would try to change a deal. And that's going to happen, indeed, please have the guts to stand firm. If this is indeed a consensus rule, stand firm. It happens time after time an industry lobbyist will give to the joint chairman or somebody in that community and come with a change, for the queries the whole deal, but it's to late to stop the process.

But urge DEP, urge industry, I think it would be really interesting to begin to make available funds for citizens, like yourselves, like ourselves, that could have technical expertise so that we could sit down at a table and talk intelligently. All we hear is, we talk of emotion that we don't have the science behind us. The reason we don't have the science is everyone you people who were involved in it was doing it on their own time.

I want to echo something that Perry Bryant said, and this does not despair any of the hard work that you have done. I thinks that it's terrible public policy to begin construction before there is a permit. I think I heard Perry say, it's blackmail, and it is. We have seen time and time again, throughout the regulatory community, a permit is not issued and no one has the guts to stop and say, take that investment you just made, take that capitol investment you just made a West Virginia -- that you are going to create jobs and stop it, because you do not conform to law. What's happened, historically, is DEP, then and now, bends the rules and permits a facility, as Perry said, that they never would have permitted in the beginning.

One last time I applaud your efforts. I wish the state of West Virginia had a thousand of you like that.

MS. CHANDLER: Thank you, Mr. Steenstra. Rick Eades.

MR. EADES: I am Rick Eades. I am here today on behalf of West Virginia Citizens Action Group, ditto for everything that Norm said about the participation. I sat in on six of the meetings and two of the educational secessions of the stakeholder group and I was very impress by almost everyone in the room. I felt there was a lot to gain by that process.

However, I want to put something in the context, on the public record tonight. The educational events that DEP offered were about all that we had to rely on. Thank goodness, some of the members of this community were able to dial up the phone and call a couple of faculty members and get an occasional hour or two of technical review.

It's hard to imagine, I have had 218 semester credits and I came in to these educational events that DEP put on on their own time at night, twice for over three hours each, which is six hours of lecture and education and I consider myself fairly bright on the uptake and I have worked in this arena with other professionals many times. That's completely insufficient.

There is no way we are prepared in a technical or legal manner to be able to properly contribute. So when I ditto everything that Norm said, in particular challenging industry to consider, since we realize what's happening with the state, that it might be in all of our best interest if we were provided with funding to have some expertise.

I know this was part of the process too, that we spent two or three meetings on a de minimus list. For those of you who don't know what that is, that is many, many maybe 106 different categories we looked at, that we were potentially not going to require permits for, because there was to little contamination coming from those types of things. Anything from bathroom exhaust up. Well, six hours of education, I think they offered three of those training events, are to be applauded. You couldn't get that anywhere else in the valley that I know of. We were fortunate to have it, and it's still not enough, we were completely out manned.

We did spend an undue amount of time on many, many issues in the process and I am not sure if that's intentional or not. I don't want to stand here an actuation that I can't back up. But it sure does seem to speak to an interest sometimes on industry's part, to spend a long time on issues that they can only win on while we were two weeks from concluding an eight month process and had not gotten to public participation yet. To Mary Anne Maul's credit, she had dug up references for vary innovative for public participation, including display adds for large facilities where the average citizen could participate.

We ask DEP about public participation and we were told that most of the permit notices, there was no response from the public, simply because we could get no response. So we had an opportunity for innovation for public notice here that went by the books. I would say let's plan to revisit, let's plan to revisit those provisions of the reg in the future as we learn the public is not being served.

Finally, I think that these processes can be beneficial, but something is critical to this stakeholder process being beneficial and that's good faith. I think the citizens bent over backwards in good faith and will not get credit for it nor will they be recognized in the legislative secession for the following compromises. In tense compromises in this preconstruction, that would help industry, we understand some of the rational behind it. But, still we worry about it being misused. Compromises in the de minimus list, compromises in the public participation, compromises in administrative updates and trying to give back industry at least some good faith effort, we did not feel like, in many cases, and I can't count them on one hand, where I felt like it was returned. In fact with two weeks left in the process we were confirmed with a memo in writing, that reneged on every single chapter and verse of eight months of work, in writing, from and industry representative, with two weeks to go in the process. That is not good faith. I think in order to have good faith, two things need to happen, industry needs to give us credit for those compromises and we need to work harder to get compromises like and back from industry. The only way we are going to do that, is with technical assistance. We can not come in here, no matter how educated or experienced we are and in six or eight hours of education, caught up, and be equal players at that table. Thank you, very much.

MS. CHANDLER: Thank you, Mr. Eades. Vince George.

MR. GEORGE: I just got a -- my name is Vince George, I am a lobbyist, political scientist and a political junkie, as well. I have followed these processes and like also to commend the folks who have spent a lot more time on it than me. But I want to run through a couple of things that I have gleaned from the coverage of these issues and things that I would like to see as a citizen occur and haven't.

One, would be endorsing what Perry Bryant was talking about and I think it was a reasonable expectation before construction would be undertaken for any kind of new facility that we would have all of the permits in place. I mean, I liken it to giving people drivers licenses who haven't passed their driving test. I think that is a fair comparison.

So that's one issue. Another is that in

terms of out of attainment I wanted to endorse what Jeri Hunt said and that is that it is an economic development issue. And also to mention, I grew up in this valley and I have wondered what it is that collects on my car and on my apartment and on my home and what I have taken (inaudible). I think everybody should consider that and consider what kind of mix we are living in and what we are leaving for younger people. And also in comparison to where I live now. I live in Morgantown and it's one of the most, historically, one of the most totally industrialized areas on the earth. There is still a lot on contemplation about what we have made there.

Also, I also want to comment on adequate notice and the fact of, what are deemed to be legal notices, I don't consider them to be adequate. I think those are things that were things that were done in years gone by to, essentially, keep the public out of the process and I would like to have those kinds of things remedied and consider exactly what is legal and what might be more of a fair and good faith kind of notice.

Finally, I would like comment on something I heard Mary Ellen O'Farrell say one day, that has stuck with me from the time that she said it at an Office of Air Quality meeting, that the way the current set up is everyday is industry day. The way that we have the different lobbyist and different technical experts and have a lot, in equity, in terms of the process with the citizen involvement, and expectations of work to do.

The idea that there is an equal playing field here, there simply isn't. I think that the idea of everyday being industry day is a fair comment and I would like to just see the things I mentioned be considered as things that would, at least, go sometimes or in some direction towards equalizing the playing field for citizen across the state.

Thank you, very much.

MS. CHANDLER: Thank you, Mr. George. David Flannery.

MR. FLANNERY: Thank you. I would like to open by extending my thanks and appreciation to DEP for undertaking the simpler process and for that matter, Governor Underwood for supporting that process as it unfolded, it was a significant, almost experiment, the way that it occurred. Certainly, unprecedented in anything that I have been involved in and I think that it worked. It had it's moments and not without pain, but it worked.

I am here today to speak for the Chamber of Commerce, active participants in the entire process.

We are mightily concerned about Reg 13, concerned about it principally because it has no federal counterpart. Concerned about it because it effects every operation that business and industry is engaged in down to the smallest of the sources, smallest of the activities that we have to confront and we have to deal with.

The concern about that is that every time industry has to move in to the market place and respond to opportunities that are there, we have to deal with Reg 13. And we have to deal with it, in a way that, not only enables business and industry to move in the marketplace, but does it in a way that protects public health. The harsh reality of it is that with out business and it's ability to compete, West Virginia and it's entire environment is affected. We look for a regulation that finds the right balance between those. Much of the issues that industry is concerned about in this regulation don't have anything to do with increased pollution. They are process issues.

We believe that we have come to terms with the stakeholders on a number of those issues. We are pleased that we were able to support the public notice change that is in the current rule. On all of the issues that we believe we had agreement on, we continue, to this day, to support those changes. There were many issues in the process, however, that were left unresolved and as to that we understand that the ground rules are, were and are, that we may continue to raise those, that would be fairly within the scope of the rule.

Comments that we are presenting tonight, in writing, time doesn't permit me to get in to them in oral comment. We are bringing a number of them to the attention of the agency and we urge continued attention to that as we go through the rule making process. We are pleased to explain those and debate those at whatever public forum is present, look forward to the dialog, look forward to continuing the process of stakeholder involvement in these issues in the future.

MS. CHANDLER: Thank you, Mr. Flannery. Would anyone else like to comment on the rule 45CSR13? There being nothing further, this public hearing for 45CSR13 is concluded.

(WHEREUPON, the public hearing was concluded.)

BEFORE THE WEST VIRGINIA DIVISION OF
ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 15th day of October 1999.

Missy L. Young

Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

**CHARLESTON NEWSPAPERS**
P O Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS
FEIN 55-0676079

| | |
|---|---|
| INVOICE DATE | 09/07/99 |
| ACCOUNT NBR | 037143002 |
| SALES REP ID | 0016 |
| INVOICE NBR | 671138001 |

Legal pricing is based upon 63 words per column inch at a rate of $.0925 per word.
Each successive insertion is discounted by 25% of the first insertion rate ($.069375 per word).

| ISSUE DATE | AD TYPE | PUB | DESCRIPTION / REFERENCE NBR PURCHASE ORDER # | AD NUMBER | AD SIZE / TOTAL RUN | RATE | GROSS AMOUNT | NET AMOUNT |
|---|---|---|---|---|---|---|---|---|
| 09/04 | LEGF | GZ | PUBLIC HEARING | L441227 | 1X0988 | | | |
| | | | 671138001 | | 9.88 | 5.83 | 57.55 | |
| 09/04 | LEGF | DM | PUBLIC HEARING | L441227 | 1X0988 | | | |
| | | | 671138001 | | 9.88 | 5.83 | 57.55 | 115.10 |
| | | | TOTAL INVOICE AMOUNT | | | | | 115.10 |

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LYNN R. FIELDER
3245 PUTNAM AVE.
HURRICANE, WV 25526
My Commission Expires December 11, 2008

I, Sandra Ligg of
THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:
PUBLIC HEARING
was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 6TH day of SEPTEMBER 1999. Published during the following dates: 09/04/99-09/04/99
Subscribed and sworn to before me this 8 day of September.
Printers fee $ 115.10

Lynn R Fielder
Notary Public of Kanawha County, West Virginia

WV DIV OF ENVIR PROTECT
OFFICE OF AIR QUALITY ANNEX
1999 SEP 27 A 10: 51
RECEIVED

**NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD**

On Tuesday, October 12, 1999 beginning at 6:00 p.m., the West Virginia Division of Environmental Protection, Office of Air Quality will hold a public hearing on proposed revisions to the following legislative rules:

45CSR8 "Ambient Air Quality Standards for Sulfur Oxides and Particulate Matter"

45CSR9 "Rules Pertaining to Ambient Air Quality Standards for Carbon Monoxide and Ozone"

45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation"

45CSR24 "To Prevent and Control Emissions from Hospital/ Medical/ Infectious Waste Incinerators"

Upon authorization and promulgation of revisions to 45CSR8, 45CSR9 and 45CSR13, the Office of Air Quality will seek federal approval of the rule change by the U.S. Environmental Protection Agency for inclusion in the State Implementation Plan for the Federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR24, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State's Plan for Hospital/ Medical/ Infectious Waste Incinerators, pursuant to section 111(d) of the Federal Clean Air Act, and also included in the State's request for delegation of authority to implement and enforce 40 CFR Part 60 Subpart Ec.

The hearing will be held at the Division of Environmental Protection, Office of Water Quality — Conference Room, 1201 and is open to the public. Written and oral comments will be accepted until the close of the hearing on October 12th and will be made a part of the rulemaking record. Comments will not be accepted by e-mail. The public may submit written comments by mail, facsimile (304-558-3287) or other delivery to the Office of Air Quality through October 12th for inclusion in the rulemaking record at the following address:

Edward K. Kropp, Chief
Office of Air Quality
1558 Washington St., E.
Charleston, WV 25311-2599

Comments submitted by mail must be postmarked by October 12, 1999. Copies of the proposed legislative rules for 45CSR8, 45CSR9, and 45CSR24 will be available for public review on or before September 3, 1999 at the Office of Air Quality's Charleston office at the above address. Copies of the proposed legislative rule for 45CSR13 will be available for public review on or before September 8, 1999, at the same address.

(441227)

# WEST VIRGINIA REGISTER

Published by Ken Hechler, Secretary of State

*Volume XVI*

*Issue 37*

*September 10, 1999*

*Pages 1634-1674*

*A Weekly Publication*

*Administrative Law Division*

*Judy Cooper*
*Director*

*Lisa Blake*
*Leah Powell*
*Administrative Assistants*

*Secretary of State*
*Administrative Law Division*
*Bldg. 1, Suite 157K*
*1900 Kanawha Blvd. E.*
*Charleston, WV 25305-0770*

*(304)558-6000*
*www.secretary.state.wv.us/sos*

*CONTENTS*

**LEGISLATIVE**

# WEST VIRGINIA
## SECRETARY OF STATE
KEN HECHLER
## ADMINISTRATIVE LAW DIVISION

Do Not Mark In This Box

### NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

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

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

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 NEW RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

DATE OF PUBLIC HEARING: October 12, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Water Quality - Conference Room
1201 Greenbrier Street
Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Edward L. Kropp, Chief
Office of Air Quality
1558 Washington Street East
Charleston, WV 25311-2599

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL.

*Kenneth J. Walker, ...*

09-03-99 11:50 DHHR-BUREAU FOR MEDICAL SERVICES

STATE OF WEST VIRGINIA
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

Cecil H. Underwood, Governor — Joan E. Ohl, Secretary

**MEMORANDUM**

**Date:** September 3, 1999

**To:** Judy Cooper, Secretary of State's Office

**From:** Auburn A. Cooper, Director, Medical Health Care and Policy Coordination

**Subject:** Publishing Notice in State Register

The drug, Provigil, is in a therapeutic class that requires prior authorization in the West Virginia Medicaid program. Draft criteria may be obtained by calling the Medicaid Pharmacy Unit at (304) 926-1753 or by visiting the Medicaid website at www.wvdhhr.org/bms. Written public comment may be addressed to the Bureau for Medical Services, Building 6, Capitol Complex, Charleston, West Virginia 25305.

BUREAU FOR MEDICAL SERVICES
State Capitol Complex, Building 6
Charleston, West Virginia 25305
Telephone: (304) 926-1700 FAX: (304) 926-1861

## 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 October 12, 1999, the Division of Environmental Protection (DEP), Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 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." The OAQ received written comments on the rule from the West Virginia Chamber of Commerce; Union Carbide Corporation; CDX Gas, LLC; Consolidation Coal Company; Kanawha River Terminals, Inc.; West Virginia Mining and Reclamation Association; Mary Anne Maul, WV League of Women Voters; Tom Jarrell; West Virginia Oil and Natural Gas Association and Independent Oil and Gas Association; American Electric Power; West Virginia Manufacturers Association; GE Plastics; the United States Environmental Protection Agency (U. S. EPA) Region III; and Deirdra L. Halley, League of Women Voters enclosing comments by Carolyn Jefferson-Jenkins, President. In addition, eleven (11) persons commented at the public hearing concerning OAQ's proposed 45CSR13. The proposed rule was the subject of extensive stakeholder discussions, and the OAQ believes a consensus was reached by the stakeholders on many important issues, although not all. The OAQ has summarized the comments and provides the following responses.

### I. Commenter: West Virginia Chamber of Commerce

**COMMENT A.** <u>*Permit Determination Notification*</u>
*Commenter requested that section 5.13 of rule be deleted and proposed a revision that would convert it to an optional regulatory mechanism and allow the provision to be used to seek voluntary restrictions on operations.*

RESPONSE A. OAQ disagrees that subsection 5.13 should be deleted but does agree there should be an optional mechanism for a source to notify the agency and request a permit determination. The OAQ agrees that the legal obligation is on the source to obtain any required permits under this rule. Subsection 5.13 has been revised accordingly. A new subsection 5.14 has been added to require sources with such changes to maintain records for two (2) years and make them available upon request. OAQ believes this will allow it to keep track of any such changes to the extent deemed necessary.

**COMMENT B.** <u>*Hazardous Air Pollutants*</u>
*Commenter believes OAQ is trying to expand its regulation of hazardous air pollutants. Commenter proposes that the first sentence of section 15 be*

*deleted; that the fourth sentence of section 15 be revised to provide that any MACT requirement be incorporated into a Regulation 13 permit when appropriate; and, that section 15 provide that its provisions not be made applicable to such sources unless and until a MACT is determined for those sources and then only for hazardous ir pollutants covered by that MACT.*

RESPONSE B. OAQ responds that the current rule covers almost all of the 188 air pollutants considered hazardous by the U.S. EPA (HAPs) by virtue of their being either volatile organic compounds (VOC) or particulate matter (PM). (The emission of 6 pounds per hour of VOC and PM requires a construction permit and 2 pounds per hour or 5 tons per year a modification permit under the current rule.) OAQ believes, however, that HAPs are potentially harmful enough to warrant an express inclusion in the rule for all 188 HAPs and that a smaller threshold of 2 pounds per hour or 5 tons per year is reasonable to require a permit from a new source, considering the nature of these pollutants. (Although please note that the threshold level for a modification involving HAPs remains the same as in the current rule).

This revision to the rule will provide the agency with the regulatory mechanism to monitor sources with HAPs and keep track of the amounts of these pollutants being emitted into the ambient air. This is the primary purpose behind the language in subsection 15.1 of the proposed rule which requires a source applying for a permit to include information in its application on the nature and extent of any HAPs for purposes of establishing an inventory of these pollutants.

Significantly, the rule does not allow the agency to impose any controls on a source which are more stringent than any controls or limitations required pursuant to federal law. (See section 15 of the proposed rule).

Regarding the issue of the rule being more stringent than a federal counterpart regulation (also raised by the commenter), there is no direct federal counterpart rule establishing a minor source permitting program, and thus the argument does not apply. Even assuming there is a federal counterpart, however, the rule is not more stringent since it does not authorize the OAQ to impose more stringent controls, but merely provides a way for the OAQ to keep track of HAP emissions.

In addition to questioning the rule's express inclusion of the 188 HAPs, the commenter proposed that the first sentence in subsection 15.1 be deleted as duplicative. OAQ has added language to this sentence to clarify that the information on HAPs is to be submitted by way of the permit application, thus not being redundant. The other suggestions on section 15 have been adopted and the language modified accordingly.

**COMMENT C.** <u>*Administrative Updates Final Action*</u>
*Commenter urged that the time lines of authorizing a requested administrative update be addressed by changing section 4.1.b. to provide that the Director shall take action on such request within 60 days of its receipt or provide that final action on all Class I administrative update requests shall be taken within 60 days and that action on Class II administrative updates may be taken within 60 days.*

RESPONSE C. OAQ agrees with the second option stated by the commenter and has revised the language accordingly.

**COMMENT D.** <u>*Administrative Updates Immediate Implementation*</u>
*Commenter proposes language to allow Class I administrative updates to be implemented immediately upon their filing at the sole risk of the permittee.*

RESPONSE D. OAQ agrees and has added a new subsection 4.5 to so state.

**COMMENT E.** <u>*Permit Condition Authority*</u>
*Commenter urges that OAQ not adopt the proposed change in section 5.11 and delete the words "and other documented relevant information" from the final version of the rule.*

RESPONSE E. OAQ has deleted the subject language in response to the concern that the language is too broad or vague and may allow the Director to rely on information not particularly relevant. OAQ notes, however, that it believes it is appropriate to utilize information obtained from other similar sources with similar operations or control devices in order to fulfill its statutory obligations in processing permits.

**COMMENT F.** <u>*Stationary Source Threshold*</u>
*Commenter objects to the perceived changes to the definition of stationary source related to volatile organic compounds and regulated air pollutants and urges that the words "or five (5) tons per year" be deleted from this definition.*

RESPONSE F. Upon further consideration of this issue, OAQ agrees that 5 tons a year may be too small to require a permit and so has revised the language to increase the "trigger" to 10 tons a year.

**COMMENT G.** <u>*De Minimus Source Category for Criteria Pollutants*</u>
*Commenter is supportive of the inclusion of a Tier II de minimus source category related to criteria pollutants, but believes the language describing that category and the definition of "de minimus source" itself creates much confusion and inconsistency about the proper meaning of the category. The commenter urges that the term "aggregate" be deleted from section 2.6 and offers revised language. The commenter also urges that the words "aggregate*

*total" be deleted from Item 5 in Table 45-13C.*

RESPONSE G. In light of the changes OAQ is making to subsections 5.13 and 5.14, the Tier II de minimus list (which sources were required to keep records) is no longer necessary. Therefore, subsection 2.6 has been revised accordingly. The remaining language in subsection 2.6 has been revised as the commenter suggested, including the reference to a "common plan."

**COMMENT H.** *<u>De Minimus Source Category for HAPs and TAPs</u>*
*Commenter is supportive of the inclusion of a de minimus source category of sources of toxic air pollutants and hazardous air pollutants but has the following concerns. First, commenter believes stakeholders agreed that such category would be included as a Tier I category, not Tier II and, second, commenter proposes that the category be moved back to Tier I and offered revised language, ". . . total for ~~each~~ <u>all</u> toxic or hazardous air pollutant ~~from all emission sources~~ <u>that are an integral part of such emission units."</u>*

RESPONSE H. See Response I. G.

**COMMENT I.** *<u>De Minimus Source Category for R&D Units</u>*
*Commenter proposes that a new Tier II De Minimus source category be created for R&D units, because of the very small amount of pollutants emitted and the high degree of flexibility that is needed for their operations.*

RESPONSE I. OAQ points out that the revisions to section 11 relating to temporary permits may be helpful for the more expedient permitting of R&D sources. However, OAQ is amenable to considering whether R&D sources should be treated as de minimus sources and suggests that this may be an appropriate issue to be taken up by an Air Quality Advisory Committee to be formed in the near future.

**COMMENT J.** *<u>Permanent Shutdowns</u>*
*Commenter has an issue of concern in section 10.4 shutdown language. Commenter believes the issue of concern can be best addressed by relocating this provision into section 5 of the rule and changing its provisions so that a source can make a demonstration to the Director as to the reasons why a source should not be considered permanently shutdown.*

RESPONSE J. OAQ agrees and has moved the language from the definition of "stationary source" to subsection 10.5; the language has also been revised.

**COMMENT K.** *<u>6 pph Threshold Waiver</u>*
*Commenter urges that a mechanism be created to allow a source to make a demonstration to the sole satisfaction of the Director that increases which exceed 6 pounds per hour, but which are less than 5 tons per year, are not significant and in which case those changes would not be subject to the*

*permitting process related to modification.*

RESPONSE K. OAQ understands there may be situations where this flexibility is appropriate but believes the issue needs further study. Therefore, OAQ suggests the Air Quality Advisory Committee consider this issue further.

**COMMENT L.** *Regulated Air Pollutant Criteria*
*Commenter points out that the definition of regulated air pollutant contains new subsections, 2.21.c, 2.21.e and 2.21.f, which add specific new pollutants to the definition of a regulated air pollutant and suggests changes to restore the definition to its original form.*

RESPONSE L. Regarding the subdivision pertaining to HAPs, see Response I.B. In addition, the current definition in the rule already includes the 188 HAPs insofar as they are "subject to an emission standard..." (See current §2.21.d. and 45CSR34.) Likewise, the addition of a specific subdivision for NSPS pollutants merely clarifies the current rule insofar as they are subject to 45CSR16. These two new subdivisions, along with the one for ozone-depleting substances, will make the OAQ's minor source permitting rule consistent with the Title V operating permit rule at 45CSR30 which will facilitate using Regulation 13 permits as synthetic minor permits and the parallel processing of modifications under both programs.

**COMMENT M.** *Permit Application Incorporation*
*Commenter expressed concern that to the extent that a Director seeks to establish as a permit condition, a matter that is contained within a permit application, the Director should be called upon to specifically identify what part of the permit application would constitute a condition in the permit. Commenter proposed language to section 5.11.*

RESPONSE M. OAQ has agreed to add language to subsection 5.11 which requires the Director to specifically mention portions of the application the agency intends to make permit conditions, other than plans and specifications. OAQ believes it is inherent in the permit issuance process that the plans and specifications submitted in a permit application must be adhered to unless the permit is subsequently revised (see subsection 10.3). A person may request either an administrative update or a modification, whichever is appropriate, to reflect any changes in the original plans and specifications submitted to the agency.

**COMMENT N.** *Subchapter II Sources*
*Commenter urged that a provision be added to the scope which states that Regulation 13 does not regulate nonroad engines, nonroad vehicles, motor vehicles and other emission sources regulated under Subchapter II of the Federal Clean Air Act.*

RESPONSE N. OAQ agrees with this comment and has included the suggested language in subsection 1.1.

**COMMENT O.** <u>*Storage of Equipment On Site*</u>
*Commenter urged OAQ to make subsections 5.1 and 5.2 clear that the changes made to this rule are intended to authorize the temporary storage of material on-site in advance of permit issuance.*

RESPONSE O. OAQ does not agree with this comment and points out that the proposed language was thoroughly discussed in the stakeholders group. OAQ believes the criteria in subsections 5.1 and 5.2 significantly broaden the concept of commencing construction under the rule and establish an appropriate demarcation between activities that must be permitted and those that do not. OAQ also notes that several other commenters were concerned that the revisions to the rule in this regard allow too many pre-permitted activities to occur.

**COMMENT P.** <u>*Incorrect Cross Reference*</u>
*Commenter states that OAQ should change the cross reference in subsection 10.4 to read, "W.Va. Code §§22-5-1 et seq."*

RESPONSE P. OAQ disagrees. Although the rule has been revised to make this change in other sections, the reference to the entire DEP Code is appropriate here to make it clear that possession of a Regulation 13 permit does not relieve a person of any other DEP requirements which are applicable.

**COMMENT Q.** <u>*Air Quality Demonstration*</u>
*Commenter supports language in section 4.3 which addresses the critical issue of the extent to which a source would need to submit information assessing potential impact on ambient air quality and that no such information would need to be submitted by the permittee unless there was a determination by the Director that there was a potential for significant ambient air quality impact.*

RESPONSE Q. No response required.

**COMMENT R.** <u>*Exempt Di Minimus Sources From Permitting*</u>
*Commenter strongly supports the proposed changes to Regulation 13 that has a list of sources that, by the rule's own terms, are deemed to have insignificant emissions and/or be sources that do not usually have quantifiable emissions which can be practically regulated in determining potential to emit or actual emission changes for the purposes of determining whether a permit is required under this rule.*

RESPONSE R. No response required.

**COMMENT S.** *Modification Trigger at 6 pph*

*Commenter supports the change in the "modification" threshold from 2 pph to 6 pph of volatile organic compounds and regulated air pollutants.*

RESPONSE S. No response required.

**COMMENT T.** *Incorporation of Federal VOC Definition*

*Commenter strongly supports the proposal by OAQ to incorporate by reference the U. S. EPA definition of "volatile organic compound."*

RESPONSE T. No response required.

**COMMENT U.** *Pre-permitting Work*

*Commenter supports the provisions which have been added to section 5.1 which authorize a number of activities to occur in advance of the issuance of a permit.*

RESPONSE U. No response required.

**COMMENT V.** *Public Notice*

*Commenter supports the wholesale revisions which have been incorporated into section 8 which eliminate the unprecedented two-step public notice process.*

RESPONSE V. No response required.

**COMMENT W.** *Temporary Permits*

*Commenter supports the proposed revisions to section 11 which provide for the issuance of temporary permits, not only in the case of experimental testing, but also in the case of commercial development and other temporary purposes.*

RESPONSE W. No response required.

**COMMENT X.** *De Minimus Source Authorization*

*Commenter supports the list of de minimus sources established and encourages future expansion and development.*

RESPONSE X. No response required.

**COMMENT Y.** *Administrative Updates*

*Commenter stated that the new section related to administrative updates represents an important regulatory development.*

RESPONSE Y. No response required.

## II. Commenter: Union Carbide Corporation

**COMMENT A.** <u>*Permit Determination Notification*</u>

*Commenter is concerned about the proposal to make all hazardous air pollutants regulated under section 112 of Federal Clean Air Act "regulated air pollutants," section 2.21, and believes this proposal will require advance notification to the OAQ of any change in the method of operation of an emission unit which increases emission or results in the emission of a hazardous air pollutant by 0.1 pounds/hour. The commenter believes the number of notifications required for a research and development facility will be excessive.*

RESPONSE A. See Response I. A. explaining that advance notifications are no longer required, but optional, and Response I. I. regarding R&D activities. Also see Response I.L. regarding HAPs.

**COMMENT B.** <u>*De Minimus Source List*</u>

*Commenter does not understand the OAQ's intent in requiring that all de minimus sources from Tier II equipment be aggregated, quantified and monitored for purposes of determining whether a modification or construction has occurred.*

RESPONSE B. See Response I. G. In light of the changes to subsections 5.13 and 5.14 (Response I. A.), the Tier II list has been eliminated.

**COMMENT C.** *Commenter asks OAQ to consider including individual research and development laboratories at a technical center, such as Union Carbide, as Tier I "De Minimus Sources" and, in the event OAQ cannot agree to exempt research and development laboratories as Tier I "de minimus sources," the commenter requests that OAQ add a new Tier II item to Table 45-13B.*

RESPONSE C. See Response I. I.

**COMMENT D.** <u>*Potential to Emit*</u>

*Commenter believes it will be a major detriment for research and development facilities if potential to emit must be calculated for each of these changes and a notification and/or permit modification application filed.*

RESPONSE D. See Responses I. A. and I. I.

## III. Commenter: CDX Gas, LLC

**COMMENT A.** <u>*Thresholds for "Modification" and "Stationary Source"*</u>

*Commenter suggests that these provisions be changed in one of the following ways: (1) eliminate the 5 TPY threshold in both provisions or increase it to* *a more reasonable level; (2) add a proviso to the effect that the 5 TPY threshold does not apply to units which are presumed to operate for 8,760 hours per year; or (3) allow sources to petition the Director, on a case-by-case basis, for an exception to the TPY permitting threshold, where source construction or modification would not trigger the pounds/hour permit threshold but would exceed the 5 TPY limit to an insignificant extent.*

RESPONSE A. See Response I. F. explaining that OAQ has increased the tons-per-year threshold value to 10 TPY for stationary sources emitting VOC and criteria pollutants. Also, a corresponding change has been made to the threshold for modifications involving regulated pollutants other than HAPs and Table 13A pollutants.

**COMMENT B.** *In-Kind "Replacement" of Natural Gas Compressors*
*Commenter believes the proposed new provision is troubling and confusing for several reasons: (1) in determining whether modification thresholds are reached the only appropriate comparison is between future potential to emit and current potential to emit (for grandfathered units without permits) or current allowables (for units with permits); and, (2) there should be no doubt that where a change to a facility involves replacement with a like-kind emission unit (one engine with another of same or closely similar design), the potential to emit of the existing engine should be considered in determining whether there has been an increase in potential to emit.*

RESPONSE B. Paragraph 2.17.f.2 covers like-for-like replacement of equipment and clearly states that such replacement is not a modification.

Paragraph 2.17.f.6 has been added in recognition of the fact that the natural gas industry was not regulated by Regulation 13 prior to 1994 and, therefore, has the largest number of "grandfathered" and unpermitted sources. When a source has no permit or otherwise enforceable limitation of emissions, the OAQ has always used the actual to potential test to determine if the modification "trigger" levels will be exceeded. This is done in accordance with EPA policy. For an existing source, the average of the last two years' actual emissions can be documented by company records and/or testing. A source that is several to many years old will have lost efficiency and not maintained its original potential to emit. Also, to protect ambient air quality standards, the actual air quality impact of a change must be based on the actual current emissions when compared to the new maximum potential to emit.

**COMMENT C.** *Quantification, Monitoring and Aggregation of "Tier II" De Minimus Sources*
*Commenter states that requiring the quantification, monitoring and aggregation of "Tier II" de minimus sources is unduly burdensome and inconsistent with the apparent purpose of recognizing the existence of de minimus sources.*

RESPONSE C. See Response I. G.

**COMMENT D.** *Debottlenecking De Minimus Activities*
*Commenter is concerned that the term "debottleneck" is not further defined.*

RESPONSE D. This particular language has been deleted from the rule.

**COMMENT E.** *Definition of Regulated Pollutants*
*Commenter believes it would be helpful if the proposed subsections 2.20.c and 2.20.f included language to clarify that the OAQ only intends to treat a pollutant as "regulated" for the source categories specified in the NSPS or NESHAPs for that pollutant.*

RESPONSE E. OAQ does not believe this clarification is necessary or appropriate in the definition of "regulated air pollutant." The purpose behind this particular term is to list the universe of pollutants somehow addressed in the rule. Response I.L. further explains why consistency between the Title V list of "regulated air pollutants" and the list under 45CSR13 is important. OAQ points out that the significance of the term "regulated air pollutant" may not be as great for the issue of permit applicability (i.e., "stationary source") as it is for the issues of applicable permit conditions and changes to the source involving new or increased regulated air pollutants. Other portions of the rule must be considered to fully understand what the rule states with respect to these latter issues.

**COMMENT F.** *Administrative Updates*
*Commenter strongly supports and appreciates the OAQ's willingness to eliminate unnecessary delays associated with minor, insignificant permit changes, but believes the proposed procedures for making administrative updates as set forth in section 4 can be greatly simplified.*

RESPONSE F. OAQ believes it has further simplified the language in section 4.

**COMMENT G.** *Commenter states that allowing the Director to deny an administrative update in subsection 4.1.1a should be deleted and believes there should be no option for the Director to deny a change fitting within any of the categories in section 4.2 on any grounds other than that the requested change constitutes a modification. Further, to preserve the rights of a permittee, all denials should be subject to appeal, contrary to the proposed subdivision 4.1.c.*

RESPONSE G. OAQ disagrees. The Director must have the authority to deny a request for a change to an existing permit. There is necessarily some discretion and judgement involved in the determination of whether to modify a permit pursuant to this section. Secondly, OAQ does not believe the denial of a request for an administrative update should be appealable to the Air Quality

Board, for the basic reason that a source does not necessarily have a legal right to have a permit modified, once it has been issued and any appeals exhausted. This comports with the statutory provision regarding appeals of permitting actions under W. Va. Code §22-5-14. It is sufficient due process in this context that, as the rule requires, the director explain his or her reasons for denial in writing.

**COMMENT H.** *Commenter states the public notice requirement and imposition of a $300 fee for an administrative update are unduly burdensome and prohibitory.*

RESPONSE H. OAQ responds that the public notice requirement and $300 fee only pertain to Class II administrative updates and then not to small businesses, and OAQ believes this is appropriate.

**COMMENT I.** *<u>Pre-Permit Activities</u>*
*Commenter applauds the OAQ for attempting to clarify which activities may be undertaken at a site prior to issuance of a Regulation 13 permit, section 5.1-5.3, and offers two suggestions they believe will improve these provisions: (1) add to the list the delivery of materials to a site; and, (2) subsection 5.3 should clarify that a permittee will not be subject to penalties for actually undertaking the listed activities in good faith before obtaining a permit.*

RESPONSE I. See Response I. O. relating to storage of equipment on-site. Regarding the suggested clarification in subsection 5.3, OAQ does not believe it is necessary since the rule clearly states in subsection 5.1 that such activities may be undertaken before a permit is issued. The purpose of subsection 5.3 is to prohibit a source from "pleading the equities" in a situation where it has conducted such activities but ultimately fails to obtain a permit to construct the source.

**COMMENT J.** *<u>Public Review Procedures – Administrative Updates/Temporary Permits</u>*
*Commenter believes requiring public notice for minor actions – administrative updates and temporary permits – is counter-intuitive and will only serve to delay relief from otherwise unwieldy requirements.*

RESPONSE J. OAQ believes public notice for Class II administrative updates is necessary since such changes have the potential to impact the environment.

## IV. Commenter: Consolidation Coal Company

**COMMENT A.** *<u>Thresholds for "Modification" and "Stationary Source"</u>*
*Commenter believes that since OAQ did not propose to change the existing 5 TPY threshold, the increases in the hourly threshold does not grant relief for year-round units and requests the following changes: (1) eliminate the 5 TPY threshold in both provisions or increase it to a more reasonable level;*

*(2) add a proviso to the effect that the 5 TPY threshold does not apply to units which are presumed to operate for 8,760 hours per year; or, (3) allow sources to petition the Director, on a case-by-case basis, for an exception to the TPY permitting threshold.*

RESPONSE A. See Response III. A.

**COMMENT B.** *In-Kind "Replacement" of Natural Gas Compressors*
*Commenter believes the proposed new provision is troubling and confusing for several reasons: (1) in determining whether modification thresholds are reached the only appropriate comparison is between future potential to emit and current potential to emit (for grandfathered units without permits) or current allowables (for units with permits); and, (2) there should be no doubt that where a change to a facility involves replacement with a like-kind emission unit (one engine with another of same or closely similar design), the potential to emit of the existing engine should be considered in determining whether there has been an increase in potential to emit.*

RESPONSE B. See Response III. B.

**COMMENT C.** *Quantification, Monitoring and Aggregation of "Tier II" De Minimus Sources*
*Commenter states that requiring the quantification, monitoring and aggregation of "Tier II" de minimus sources is unduly burdensome and inconsistent with the apparent purpose of recognizing the existence of de minimus sources.*

RESPONSE C. See Response III. C.

**COMMENT D.** *Definition of Regulated Pollutants*
*Commenter believes it would be helpful if the proposed subsections 2.20.c and 2.20.f included language to clarify that the OAQ only intends to treat a pollutant as "regulated" for the source categories specified in the NSPS or NESHAPs for that pollutant.*

RESPONSE D. See Response III. E.

**COMMENT E.** *Administrative Updates*
*Commenter strongly supports and appreciates the OAQ's willingness to eliminate unnecessary delays associated with minor, insignificant permit changes, but believes the proposed procedures for making administrative updates as set forth in section 4 can be greatly simplified.*

RESPONSE E. See Response III. F.

**COMMENT F.** *Commenter states that allowing the Director to deny an administrative update in subsection 4.1.1a should be deleted and believes there should be no option* *for the Director to deny a change fitting within any of the categories in section 4.2 on any grounds other than that the requested change constitutes a modification. Further, to preserve the rights of a permittee, all denials should be subject to appeal, contrary to the proposed subsection 4.1.c.*

RESPONSE F. See Response III. G.

**COMMENT G.** *Commenter states the public notice requirement and imposition of a $300 fee for an administrative update are unduly burdensome and prohibitory.*

RESPONSE G. See Response III. H.

**COMMENT H.** *Pre-Permit Activities*
*Commenter applauds the OAQ for attempting to clarify which activities may be undertaken at a site prior to issuance of a Regulation 13 permit, section 5.1-5.3, and offers two suggestions they believe will improve these provisions: (1) add to the list the delivery of materials to a site; and, (2) subsection 5.3 should clarify that a permittee will not be subject to penalties for actually undertaking the listed activities in good faith before obtaining a permit.*

RESPONSE H. See Response III. I.

**COMMENT I.** *Public Review Procedures – Administrative Updates/Temporary Permits*
*Commenter believes requiring public notice for minor actions – administrative updates and temporary permits – is counter-intuitive and will only serve to delay relief from otherwise unwieldy requirements.*

RESPONSE I. See Response III. J.

## V. Commenter: Kanawha River Terminals, Inc.

**COMMENT A.** *Thresholds for "Modification" and "Stationary Source"*
*Commenter believes that since OAQ did not propose to change the existing 5 TPY threshold, the increases in the hourly threshold does not grant relief for year-round units and requests the following changes: (1) eliminate the 5 TPY threshold in both provisions or increase it to a more reasonable level; (2) add a proviso to the effect that the 5 TPY threshold does not apply to units which are presumed to operate for 8,760 hours per year; or, (3) allow sources to petition the Director, on a case-by-case basis, for an exception to the TPY permitting threshold.*

RESPONSE A. See Response III. A.

**COMMENT B.** *In-Kind "Replacement" of Natural Gas Compressors*

*Commenter believes the proposed new provision is troubling and confusing for several reasons: (1) in determining whether modification thresholds are reached the only appropriate comparison is between future potential to emit and current potential to emit (for grandfathered units without permits) or current allowables (for units with permits); and, (2) there should be no doubt that where a change to a facility involves replacement with a like-kind emission unit (one engine with another of same or closely similar design), the potential to emit of the existing engine should be considered in determining whether there has been an increase in potential to emit.*

RESPONSE B. See Response III. B.

**COMMENT C.** *Quantification, Monitoring and Aggregation of "Tier II" De Minimus Sources*
*Commenter states that requiring the quantification, monitoring and aggregation of "Tier II" de minimus sources is unduly burdensome and inconsistent with the apparent purpose of recognizing the existence of de minimus sources.*

RESPONSE C. See Response III. C.

**COMMENT D.** *Debottlenecking De Minimus Activities*
*Commenter is concerned that the term "debottleneck" is not further defined.*

RESPONSE D. This particular language has been deleted from the rule.

**COMMENT E.** *Definition of Regulated Pollutants*
*Commenter believes it would be helpful if the proposed subsections 2.20.c and 2.20.f included language to clarify that the OAQ only intends to treat a pollutant as "regulated" for the source categories specified in the NSPS or NESHAPs for that pollutant.*

RESPONSE E. See Response III. E.

**COMMENT F.** *Administrative Updates*
*Commenter strongly supports and appreciates the OAQ's willingness to eliminate unnecessary delays associated with minor, insignificant permit changes, but believes the proposed procedures for making administrative updates as set forth in section 4 can be greatly simplified.*

RESPONSE F. See Response III. F.

**COMMENT G.** *Commenter states that allowing the Director to deny an administrative update in subsection 4.1.1a should be deleted and believes there should be no option for the Director to deny a change fitting within any of the categories in section 4.2 on any grounds other than that the requested change constitutes a modification. Further, to preserve the rights of a permittee, all denials* *should be subject to appeal, contrary to the proposed subsection 4.1.c.*

RESPONSE G. See Response III. G.

**COMMENT H.** *Commenter states the public notice requirement and imposition of a $300 fee for an administrative update are unduly burdensome and prohibitory.*

RESPONSE H. See Response III. H.

**COMMENT I.** *Pre-Permit Activities*
*Commenter applauds the OAQ for attempting to clarify which activities may be undertaken at a site prior to issuance of a Regulation 13 permit, section5.1-5.3, and offers two suggestions they believe will improve these provisions: (1) add to the list the delivery of materials to a site; and, (2) subsection 5.3 should clarify that a permittee will not be subject to penalties for actually undertaking the listed activities in good faith before obtaining a permit.*

RESPONSE I. See Response III. I.

**COMMENT J.** *Public Review Procedures – Administrative Updates/Temporary Permits*
*Commenter believes requiring public notice for minor actions – administrative updates and temporary permits – is counter-intuitive and will only serve to delay relief from otherwise unwieldy requirements.*

RESPONSE J. See Response III. J.

## VI. Commenter: West Virginia Mining and Reclamation Association

**COMMENT A.** *Commenter endorses the stakeholder process and enthusiastically endorses the views and comments of the West Virginia Chamber of Commerce.*

RESPONSE A. See responses to Commenter I.

## VII. Commenter: League of Women Voters of West Virginia, Deirdra L. Halley

**COMMENT A.** *Commenter thanks OAQ for help and encouragement during regulatory revision. Commenter supports the final work product of the stakeholder group and looks forward to future involvement in the rule revision groups. Commenter stands behind agreement to support passage of Regulation 13 as long as no substantive changes are made.*

RESPONSE A. No response required.

**COMMENT B.** *Commenter still has grave concerns about the preconstruction and permitting aspect of Regulation 13 and believes an equity argument will still be made in cases where a final permit is denied.*

RESPONSE B. Regarding the preconstruction issue, OAQ believes it has struck an appropriate balance between environmental protection and economic interests on this issue. The rule's language in subsection 5.3 concerning "the equity argument" should prevent a source from being able to successfully make this argument.

**COMMENT C.** *Commenter would like to see more modeling done as a mandatory part of the permitting process.*

RESPONSE C. See Response XIV.HH.

**VIII. Commenter: Tom Jarrell**

**COMMENT A.** *Scope 1.1*
*Commenter asked if since the sentence, "which has not been issued a permit pursuant to 45CSR30" had been struck out, if this meant that Regulation 13 permits are no longer subject to 45CSR30.*

RESPONSE A. OAQ points out that Regulation 13 permits have never been subject to 45CSR30 (Title V operating permit rule); these are two separate permitting rules, and 45CSR13 is basically a preconstruction permit rule and 45CSR30 an operating permit rule. The reason for the deletion of the subject language has to do with a change in the agency's approach to permitting modifications of existing major stationary sources. At the time Regulation 13 was last revised in 1994, OAQ planned to process modifications of such sources exclusively under 45CSR30. Since that time, however, OAQ has decided to process those modifications under 45CSR13 concurrently with processing them under 45CSR30 ("parallel processing").

**COMMENT B.** *Briefing Document, Section E*
*Commenter asks how the chief executive officer of a state administrative agency determined that this proposed rule change would not result in the taking of a person's Constitutional rights within private real property.*

RESPONSE B. The Director relies on W. Va. Code §22-1A-3 for this proposition.

**COMMENT C.** *Previously Agreed/Signed Consent Orders*
*Commenter asked if the proposed rule changes would affect a previously entered Consent Order, signed August 4, 1998, on appeal 98-02-AQB.*

RESPONSE C. The proposed rule revisions should have no effect on the Consent Order, dated

August 4, 1998.

**COMMENT D.** *Briefing Document, Section E*
*Commenter asked if property rights can now be conveyed within OAQ permitting procedures for any permit – new, modified or amended and/or an issued general permit, G10-A or G10-B.*

RESPONSE D. See Response VIII.B.

**IX. Commenter: West Virginia Oil and Natural Gas Association and Independent Oil and Gas Association**

**COMMENT A.** *De Minimus Sources*
*Commenter compliments the OAQ on the development of a de minimus source list and believes it to be a concept that holds potential advantages for the regulated community. Commenter believes the requirements associated with the Tier II sources, particularly the requirements for aggregating emissions and record keeping, are unnecessarily complex. Commenter suggests that OAQ eliminate the requirements for aggregating emissions and record keeping and combine the de minimus categories into a single list of sources that are so small that they need not be considered for purposes of Regulation 13.*

RESPONSE A. See Responses I.A., I.G. and I.R.

**COMMENT B.** *Commenter believes if above suggestion is not taken, that the OAQ clarify that the Tier II activities need only be tracked and aggregated if the owner/operator intends to avoid permitting on the basis of the de minimus exception.*

RESPONSE B. See Responses I.A., I.G. and I.R.

**COMMENT C.** *Modification*
*Commenter approves of the increase of the emission threshold to 6 pounds per hour in section 2.17.a, but urges the OAQ to increase the other modification level from 5 tons per year to 10 tons per year.*

RESPONSE C. See Response I.F.

**COMMENT D.** *Determining Emission Changes for Compressor Engines*
*Commenter appreciates OAQ's attempt to accommodate the oil and gas industry by specifying in section 2.17.f.6 a means by which potential to emit for grandfathered compressor engines could be determined, but does not see how this section represents an improvement over the current rule. Commenter urges OAQ to develop an interpretive rule explaining how, under*

*the current rule, this type of replacement of one compressor engine for another can be accomplished without a permit, by comparing current potential to emit against future potential to emit and by calculating the future potential to emit by netting out the permanent removal of the existing engine.*

RESPONSE D. See Response III.B. OAQ is willing to consider whether an interpretive rule would be helpful to further clarify these issues.

**COMMENT E.** *Use of Catalytic Converters*
*Commenter thanks OAQ for its willingness to allow calculation of potential to emit after interlocked catalytic controls are taken into account. Commenter urges OAQ to adopt 45,000 hours of operation as the time for change of catalyst and allow other means of determining that the catalytic converter is working, which would introduce additional flexibility. Commenter proposes the final sentence of section 2.19 read, "The catalytic converter shall have catalyst replaced after every 45,000 hours of operation, as established by records kept by the operator, unless the Director agrees to an alternative method of verifying catalyst effectiveness."*

RESPONSE E. OAQ agrees that this approach is acceptable but has revised commenter's suggested language to provide a ten-year maximum life for such equipment.

**COMMENT F.** *Stationary Source*
*Commenter believes that a 5-ton-per-year limit on any source operating 24 hours a day, 365 days a year effectively limits the emissions that are allowed without a permit to 1.2 pounds per hour and urges OAQ to delete the 5-ton-per-year threshold.*

RESPONSE F. See Response I.F.

**COMMENT G.** *Commenter urges OAQ to delete the new thresholds for hazardous air pollutants.*

RESPONSE G. See Response I.B.

**COMMENT H.** *Commenter applauds OAQ's willingness to remove the current provision in section 2.24, which provides that an emissions unit "subject to any emissions control rule promulgated by the Director" is a stationary source and, therefore, must have a permit. Commenter believes this phrase was subject to several different interpretations and was a constant source of confusion.*

RESPONSE H. The proposed rule which went to public comment in September of 1999 inadvertently deleted current section 2.25.a. OAQ's intention was to include a revised version of the current language, which was discussed in the stakeholder process and which OAQ has now inserted in the approved rule. OAQ believes this provision is important to ensure that sources subject to emission control standards are required to apply for and obtain a permit. It is in the permitting process that a source is required to demonstrate that it will comply with such substantive control requirements.

**COMMENT I.** <u>*Administrative Updates*</u>
*Commenter believes language in section 4.1 suggests that the Director can impose changes or unilaterally amend the permittee's application. Commenter believes OAQ should confirm that all administrative updates are voluntary and that, when increased emissions are the reason one might seek an administrative update, permittees still have the option to give notice of the change in accordance with proposed section 5.13 and immediately proceed with the project causing the increase in emissions, as long as those emissions do not constitute a modification. Commenter recommends that section 4.1.e be deleted.*

RESPONSE I. See Response IX.H. OAQ agrees the source must consent to the update and the language in the rule has been clarified.

**COMMENT J.** *Commenter suggests deletion of the second sentence in section 4.1.c; since West Virginia Code §22-5-14 provides for an appeal by anyone whose "interest may be affected . . . by a permit issued, modified or denied . . ."*

RESPONSE J. See Response III.G.

**COMMENT K.** <u>*Activities Taking Place Before Construction Commences*</u>
*Commenter believes clarification of what can be done without a permit is very helpful and suggests that the following be added to the list of acceptable activities, "Deliver materials and equipment on site."*

RESPONSE K. See Response I.O.

**COMMENT L.** <u>*Determination of Compliance*</u>
*Commenter believes that OAQ intended to require immediate steps to come into compliance after a failed stack test, but believes section 6.3 requires that the source always reduce throughput capacity or added enhanced control devices. Commenter suggest that section 6.3 be rewritten to require immediate remedial steps approved by the Director, steps which might include, but are not limited to, reduction in throughput capacity or additional control devices.*

RESPONSE L. Subsection 6.3 has been modified to clarify that the specific remedial actions listed are not exclusive and are not necessarily required in every case.

**COMMENT M.** <u>*Public Notice Requirements*</u>
*Commenter requests clarification regarding Notice Level B. Commenter believes it is not clear whether the Class I legal advertisement is placed in*

*the newspaper after the general permit registration application has been reviewed and approved by OAQ or whether it is done preliminary to review. Commenter believes it should be published as soon as the applicant has filed the permit application and requests confirmation of that fact.*

RESPONSE M. Commenter is correct that the legal advertisement must be placed at the time the application is filed. Also note that Notice Levels A and B have been consolidated into one level, Level A.

**COMMENT N.** <u>*General Permit Fees*</u>
*Commenter suggests that section 12 be changed to require a fee of no greater than $300 for a modification of a general permit.*

RESPONSE N. OAQ disagrees with this suggestion because 45CSR22 requires that a general permit application fee be $1,000.

**COMMENT O.** <u>*Regulation of Hazardous Air Pollutants*</u>
*Commenter believes Regulation 13 permits should limit criteria pollutants and not hazardous air pollutants. To require hazardous air pollutant limits in situations other than synthetic minor source permitting and case-by-case MACT would be to interfere with the Federal system of regulating hazardous air pollutants, which was intended to be accomplished through control devices, not ambient air standards.*

RESPONSE O. See Response I. B. and I. L.

**X. Commenter: American Electric Power**

**COMMENT A.** <u>*Amendment to Definition of "Actual Emissions"*</u>
*Commenter recommends, to provide maximum flexibility in section 2.1.c and to protect the ability of the permittee to participate in permit decisions, that the phrase "with the permittee's consent" be added prior to the phrase ". . . or the actual emissions of an existing source . . . "*

RESPONSE A. The proposed new language is intended to provide another option for sources that have not begun operation. If a source believes the Director has inappropriately utilized this option, it has the right to appeal the permit, once issued or denied.

**COMMENT B.** <u>*De Minimus Source Definition*</u>
*Commenter supports the inclusion of this new concept into 45CSR13 and congratulates the OAQ on its introduction. Commenter asks that OAQ clarify that, for Tier II sources, the aggregation requirements apply to sources that are part of a single project and are not to be applied to unrelated projects; and, when classes of emitted materials are aggregated as opposed to specified single materials, i.e., are criteria pollutants to be*

*aggregated or hazardous air pollutants.*

RESPONSE B. See Response I. G.

**COMMENT C.** <u>*Table 45-13B, Tier I De Minimus*</u>
*Commenter recommends that Item 13 reference be amended by substituting the word "recreational" for the term "privately owned."*

RESPONSE C. The term in the proposed rule is "publicly," not "privately" owned. OAQ believes after stakeholder discussion, this term is more appropriate than "recreational."

**COMMENT D.** <u>*Modification Definition*</u>
*Commenter agrees with the OAQ and stakeholders in the incorporation of the 6 pph trigger for determining when a modification is subject to permitting. Commenter also believes that there are instances in which a source may also operate infrequently at this emission rate and will not exceed the 5 tons per year trigger. Commenter urges to define this trigger as 6 pph "and" 5 tpy. In light of previous OAQ staff opposition to this, the commenter proposes as an alternative that a proposed permittee be allowed to request a variance to the permitting requirement if only one of the triggers is exceeded.*

RESPONSE D. See Response I. F.

**COMMENT E.** <u>*HAPs Trigger in Definition of "Modification"*</u>
*Commenter cannot find an appropriate rationale for a separate permit trigger that applies only to hazardous air pollutants. Commenter urges that this section be deleted.*

RESPONSE E. See Response I. B. and I. L.

**COMMENT F.** <u>*Example of Pollution Control Device in Definition of "Potential to Emit"*</u>
*Commenter believes that using "low $NO_X$ burners" as the sole example of "inherent to the emissions unit" could be misinterpreted to exclude normal post production emissions control devices that would be appropriately included in this category. Commenter suggests that the Director be allowed to determine potential to emit after the control device when it is demonstrated that either a mode of operation or legally-enforceable requirements will not allow the operation of the unit without the device.*

RESPONSE F. OAQ agrees there could be some confusion by the example and so has removed it.

**COMMENT G.** <u>*"Regulated Pollutant" Definition*</u>
*Commenter believes this proposed section significantly expands the definition*

*of regulated pollutant when compared to the existing 45CSR13 and should not be considered to be a "consensus" issue resulting from the stakeholder process. The commenter strongly recommends that section 2.20 of the proposed regulation remain unchanged from section 2.21 of the current 45CSR13.*

RESPONSE G. See Response I. L.

**COMMENT H.** *New Trigger in Definition of "Stationary Source"*
*Commenter recommends that until an assessment of resource demands, the determination of new regulatory burden and clear demonstration of increased protection to the public, the definition of "stationary source" currently found at 45CSR13, section 2.25, be retained until such information is available.*

RESPONSE H. See Response I. F.

**COMMENT I.** *Specification of Permit Revocation for Low Operation Status in Definition of "Stationary Source"*
*Commenter believes that the restriction in section 2.24.e is improperly placed in the definition of "stationary source" and should be placed in section 10. Second, the commenter is unable to see why this new reason for revocation in any way enhances the public welfare or reduces a burden on the regulated community. The commenter suggests that, pending a demonstration by OAQ that this section enhances the public welfare or reduces the regulatory burden, this section should be deleted. If not deleted, it should be substantially modified to allow low-use emission units to continue to operate without additional paperwork burden.*

RESPONSE I. See Response I. J.

**COMMENT J.** *Administrative Updates*
*Commenter applauds OAQ for the development of this concept. The commenter suggests that OAQ consider amending the 60 day time period for the processing of these changes and that any request for an administrative update be allowed to be implemented immediately at the permittee's risk.*

RESPONSE J. See Response I. C. and I.D.

**COMMENT K.** *Clarification of Activities not Constituting "Construction"*
*Commenter compliments OAQ on the adoption of section 5.1.a through 5.1.h.*

RESPONSE K. No response required.

**COMMENT L.** *Setting of Permit Restrictions Based on "Other Documented Relevant Information"*

*Commenter believes section 5.11, "... and other documented relevant ... information," is a significant increase in the authority of the Director and has the effect of fundamentally changing the nature of 45CSR13 from a rule providing permit. The commenter strongly opposes this modification and recommends that the language of the current rule, section 4.9, be retained.*

RESPONSE L. See Response I. E.

**COMMENT M.** *Restrictions of General Permits to Facility-wide Application*
*Commenter does not understand OAQ's insistence that general permits are by their nature facility-wide, section 5.12. Commenter strongly recommends that the word "facility-wide" be deleted from the proposal.*

RESPONSE M. OAQ disagrees because allowing a general permit to be used on an individual emission unit basis could permit a circumvention of the major source program under 45CSR14 or 45CSR19.

**COMMENT N.** *Permit Determination Notification*
*Commenter urges that the mechanism set forth in proposed section 5.13 be deleted or utilized instead as an optional regulatory rule available to the permittee to address the situation where the regulatory requirements are not sufficiently clear to allow the permittee to determine with sufficient certainty whether a permitting requirement is triggered.*

RESPONSE N. See Response I. A.

**COMMENT O.** *Required Action Upon Failing a Stack Test*
*Commenter objects to the presumption that the failure of a stack test is automatically considered to result in a conclusion of permit violation, section 6.3, and the severe restrictions placed in the proposal on the course of action open to the permittee to resolve the action. The commenter proposes that this section be redrafted to allow more reasonable latitude in addressing such situations.*

RESPONSE O. See Response IX.L.

**COMMENT P.** *Hazardous Air Pollutants*
*Commenter believes the proposed section 15.1 goes beyond the scope of hazardous air pollutant requirements set forth in the Clean Air Act by adding emission inventory and control requirements. Commenter urges that section 15.1 be deleted from the OAQ proposal and that 45CSR13 should not be revised to expand the scope of hazardous air pollutant's regulation.*

RESPONSE P. See Response I. B.

## XI. Commenter: West Virginia Manufacturers Association

**COMMENT A.** <u>*Scope – Nonroad Engines*</u>
*Commenter suggests language to the scope section to state that nonroad engines are not regulated under Regulation 13, "This rule does not apply to nonroad engines, nonroad vehicles, motor vehicles or other emission sources regulated under Subchapter 11 of the federal Clean Air Act; provided, however, that the Director may regulate such sources pursuant to another rule drafted for that purpose.*

RESPONSE A. See Response I. N.

**COMMENT B.** <u>*De Minimus Sources*</u>
*Commenter applauds the OAQ for its willingness to consider the issue, but believes that section 2.6 and Tables 45-13B and 45-13C make regulation of de minimus sources unnecessarily complex. The commenter urges the OAQ to designate all the de minimus sources as Tier I and to remove all requirements for aggregation and record keeping.*

RESPONSE B. See Response I.G. and I. R.

**COMMENT C.** <u>*Modification*</u>
*Commenter appreciates the proposed increase in the hourly threshold in the modification definition, section 2.17, from 2 pounds per hour to 6 pounds per hour for criteria pollutants and the addition of a threshold for toxic air pollutants. The commenter asks the OAQ to consider allowing emissions of greater than 6 pounds per hour of criteria pollutants when the total emissions would fall below 5 tons per year and suggests the following language at the conclusion of Section 2.17.b, "except that, upon petition of the owner or operator, the Director may authorize a greater hourly emissions increase without a permit, upon concluding that the annual emissions will be insignificant."*

RESPONSE C. See Response I. K.

**COMMENT D.** *Commenter believes, with regard to hazardous air pollutants, that the modification thresholds of 2 pounds per hour and 5 tons per year should apply in limited situations, because hazardous air pollutants should only be regulated in Regulation 13 permits in rare situations. To the extent the hazardous air pollutant modification thresholds are relevant, the commenter would appreciate clarification that the modification threshold is determined by aggregating increases and decreases that are contemporaneous with the modification event.*

RESPONSE D. No response required to first part of comment. Regarding the second issue, OAQ believes the language of the rule is appropriate and that the question raised can best be decided upon particular facts.

**COMMENT E.** *Commenter is concerned about section 2.17.f.6, which suggests that determining whether an increase in emissions has occurred requires evaluating current actual emissions against new potential emissions. The commenter suggests that this be made the subject of an interpretive rule, as this is not a matter requiring a change of Regulation 13 and involves an interpretation of the current rule.*

RESPONSE E. See Response III. B. OAQ is willing to consider whether an interpretive rule would be helpful to further clarify these issues.

**COMMENT F.** *<u>"Regulated Pollutant" Definition</u>*
*Commenter states the definition of regulated air pollutant refers to pollutants regulated under New Source Performance Standards or hazardous air pollutants subject to a standard under Section 112 of the Clean Air Act. Commenter believes there may be some confusion as to whether, for example, lead compounds, which are regulated for one or another source category under Section 111 or 112 of the Clean Air Act, can also be regulated for other types of emission sources for which no lead standard has been promulgated. Commenter suggests revising section 2.20.c to read, "for any emissions unit subject to a new source performance standard promulgated under section 111 of the Clean Air Act, any air pollutant for which the emissions unit is subject to regulation." Commenter suggests similarly revising section 2.20.f as "Hazardous air pollutants identified in Section 112 of the Clean Air Act, other than those listed only in Section 112(r), but only to the extent they are accepted by a permittee seeking a voluntary permit in accordance with section 5.5, or are imposed in accordance with the requirements of 45CSR34."*

RESPONSE F. See Response I. L.

**COMMENT G.** *<u>Stationary Source Definition</u>*
*Commenter thanks the OAQ for removing section 2.24.a. However, commenter strongly disagrees with the adoption of a 5 ton per year alternative threshold in addition to the 6 pound per hour threshold that exists currently. The commenter believes the addition of the 5 ton per year threshold greatly limits the number of new sources for which permitting is not required and, for the reasons given in their previous discussion of the modification definition, the commenter opposes the creation of a threshold for hazardous air pollutants in the definition of stationary source.*

RESPONSE G. See Response I. F.

**COMMENT H.** *<u>Administrative Updates</u>*
*Commenter welcomes the inauguration of a system for making minor*

*changes to permits. However, the commenter is concerned that this section has become unwieldy and suggests the following language, "Upon agreement of the Director and the permittee, a permit issued in accordance with this rule may be amended to reflect any change that is not a modification." To the extent this language is not adopted, the commenter offers several suggestions for improvement:*

*a.* *Change the "may" in section 4.1.b to "must."*

*b.* *The denial of an administrative update request is a final action that should be subject to appeal; section 4.1.c says that it is not subject to appeal, which is contrary to the statute and raises due process concerns.*

*c.* *Section 4.1.e states that the Director may order an administrative update in a permit on his/her own initiative. The commenter suggests deletion of this paragraph because it directly contradicts section 4.1 — either the administrative update process is voluntary on the part of the permit holder or it is not.*

*d.* *Owners and operators should be free to proceed, at their own risk, with the changes described in the administrative updates while approval is pending.*

*e.* *Commenter wants to confirm that all permittees are free to continue the present practice of filing permit determination notices of emission increases in accordance with section 5.13 and proceeding to institute changes immediately, in lieu of requesting administrative updates and waiting for a response. It would be reasonable to do this through an interpretive rule or by adding the following language to section 5: "Nothing in this section prohibits permittees from giving notice of changes in accordance with section 5.13 and proceeding to make the noticed changes immediately, in lieu of, or preliminary to, filing a request for an administrative update in accordance with this section.*

RESPONSE H.

a. See Response I. C.

b. See Response III. B.

c. Language has been modified to clarify that consent is required.

d. See Response I. D.

e. See Response I. A.

**COMMENT I.** *Activities Not Constituting Construction*

*Commenter appreciates OAQ's identification of additional activities that can be undertaken without constituting construction and that can be done before issuance of a permit. Commenter urges the OAQ to consider one more category of acceptable preconstruction activities — delivery of materials, including completed emission units, to the site, without further construction of the units, rendering the emissions units operable, connecting them to utilities, placing them on a foundation or otherwise readying them for operating.*

RESPONSE I. See Response I. O.

**COMMENT J.** <u>*Setting Emission Limits*</u>
*Commenter urges the deletion of the last sentence of section 5.11, which the commenter believes overstates the OAQ's authority to establish emission limits. Commenter believes OAQ should delete the words "and other documented relevant evidence" in the last sentence of section 5.12.*

RESPONSE J. See Response I. E.

**COMMENT K.** <u>*General Permit*</u>
*Commenter believe it is a mistake to limit general permits to facility-wide and suggests the phrase "facility-wide" be deleted from section 5.12.*

RESPONSE K. See Response X. M.

**COMMENT L.** <u>*Permit Determination Notices*</u>
*Commenter urges OAQ to eliminate this section because the commenter believes the harmful effect on both industry and OAQ, in terms of productive time lost, greatly outweighs any benefits that are conferred by its existence. To the extent section 5.13 is retained, the commenter believes OAQ should revise the section by adding, "This notification is not required for any change for which an administrative update is requested," to the end of the subsection.*

RESPONSE L. See Response I. A.

**COMMENT M.** <u>*Determination of Compliance*</u>
*Commenter agrees that a source that fails to prove compliance after completion of a stack test should be required to take steps promptly to bring the emissions unit into compliance and urges changing the last sentence of section 6.3 to, "These steps may include, but are not limited to, a reduction in throughput capacity or additional and enhanced control devices."*

RESPONSE M. See Response IX.L.

**COMMENT N.** <u>*Startup, Shutdown and Malfunction Plans*</u>
*Commenter suggests adopting a new section, due to Title V vs. Regulation 13 issues, section 6.4, "Compliance with the rules of the Director during periods of startup, shutdown or malfunction of a stationary source will be determined by compliance with the applicable startup, shutdown or malfunction plan for that source, if any, that has been approved by the Director."*

RESPONSE N. OAQ believes it is inappropriate to address "start-up, shutdown and malfunction" in a permitting rule since such conditions are considered abnormal operations. It is more appropriate that these conditions be addressed in the remaining OAQ rules, setting emission standards and other requirements.

**COMMENT O.** <u>*Public Review Procedures*</u>
*Commenter believes the new notice provisions contain some favorable changes.*

RESPONSE O. No response required.

**COMMENT P.** <u>*Signage Requirements*</u>
*Commenter suggests that OAQ develop signs that a source can elect to use that meets the requirements of the regulations that a source can elect to use in lieu of its own.*

RESPONSE P. OAQ does not believe it is appropriate for it to develop signs for the regulated community.

**COMMENT Q.** <u>*Fees*</u>
*Commenter believes that a fee of no more than $300 would be appropriate for general permits.*

RESPONSE Q. See Response IX.N.

**COMMENT R.** <u>*Regulation of Hazardous Air Pollutants*</u>
*Commenter believes Regulation 13 is not the place to institute a general program for the regulation of hazardous air pollutants and believes there is no need for changes to Regulation 13 to provide redundant protection to the public. The commenter urges OAQ to clearly limit its regulation of hazardous air pollutants that are not being regulated as criteria pollutants or toxic air pollutants and believes this might be done by the following provision: "Regulation of hazardous air pollutants that are not toxic air pollutants regulated in accordance with 45CSR27 is limited to those air pollutants that are regulated in a voluntary permit issued in accordance with section 5.5 or that are imposed pursuant to 45CSR34."*

RESPONSE R. See Response I.B.

**XII. Commenter: West Virginia League of Women Voters, Mary Anne Maul**

**COMMENT A.** *Commenter believes to its credit, OAQ proposed and implemented several innovative and constructive techniques to make the stakeholder meetings work, but believes procedural misunderstandings may have undermined prospects for a three-party deal.*

RESPONSE A. OAQ responds that this was its first major effort to promulgate rules through a stakeholder process and realizes that improvements can be made for future efforts. OAQ recommends that all issues pertaining to the stakeholder process be closely studied by the Air Quality Advisory Committee to be formed in the near future.

**COMMENT B.** *Commenter believes OAQ stakeholder education sessions proved extremely informative and useful and believes tutoring citizen participants informs and expedites the negotiations and should definitely be continued in future rule-makings.*

RESPONSE B. See Response XII. A.

**COMMENT C.** *Commenter believes OAQ needs to acquire training in facilitation or engage an outside facilitator with these skills.*

RESPONSE C. See Response XII. A.

**COMMENT D.** *Commenter believes OAQ took some successful initiatives and needs to add further protections to empower public participants.*

RESPONSE D. See Response XII. A.

## XIII. Commenter: GE Plastics

OAQ would note that many of GE Plastics' comments cite the wrong section of the proposed rule. OAQ's response below will use the correct citation.

**COMMENT A.** <u>*Administrative Update*</u>
*Commenter supports language presented by the West Virginia Manufacturer's Association (WVMA) which proposes language which changes section 4.1.b to make it mandatory for the Director to take action on administrative updates within 60 days of filing and the addition of a new section, 4.5, to allow administrative updates to be implemented immediately up their filing at the sole risk of the permittee.*

RESPONSE A. See Response I. C. and I.D.

**COMMENT B.** <u>*Administrative Update —Air Quality Impact Demonstration*</u>
*Commenter supports the WVMA change to section 4.3 that would clarify that an applicant need only supply information with respect to ambient air quality impacts when requested to do so by the Director and upon a determination by the Director that there is a potential for significant ambient air quality impact.*

RESPONSE B. See Response I. Q. In addition, OAQ believes the language is clear that there is no requirement for submittal of this information absent a determination by the Director.

**COMMENT C.** <u>*Permit Determination Notification*</u>
*Commenter urges that the mechanism set forth in proposed section 5.13 be utilized as an optional regulatory rule available to the permittee to address the situation where the regulatory requirements are not sufficiently clear to allow the permittee to determine whether a permitting requirement is triggered. In addition, such an optional mechanism should be available to the permittee who might want to seek voluntary restricts or limitations on the manner in which a change might take places, so as to be certain not to trigger any permitting obligations.*

RESPONSE C. See Response I. A.

**COMMENT D.** *Commenter supports the changes WVMA proposes for section 2.20 and proposes the following be added to the end of section 2.20, ". . . in any binding and enforceable notification filed pursuant to section 5.13 of this regulation."*

RESPONSE D. See Response I. A.

**COMMENT E.** <u>*Stationary Source — Exempt De Minimus Sources*</u>
*Commenter supports the WVMA suggested revision to section 2.25, which makes it clear that de minimus sources do not constitute a stationary source by any of the criteria that would otherwise be applicable to stationary sources.*

RESPONSE E. OAQ agrees and believes the proposed language addresses this point.

**COMMENT F.** <u>*Stationary Source — Delete New Trigger Requirements*</u>
*Commenter strongly objects to the addition of significantly lower threshold requirements in the stationary source definition — volatile organic compounds, regulated air pollutants and hazardous air pollutants — and supports WVMA suggested changes to eliminate this concern.*

RESPONSE F. See Response I. L.

**COMMENT G.** <u>*Stationary Source — Permanent Shutdowns*</u>
*Commenter believes section 2.25.f should be relocated into section 5 and supports WVMA language.*

RESPONSE G. See Response I. J.

**COMMENT H.** <u>*Stationary Source — Delete Hazardous Air Pollutant Test*</u>
*Commenter supports the WVMA proposal for deleting section 2.25.c.*

RESPONSE H. See Response I. L.

**COMMENT I.** <u>*Modification – Exempt De Minimus Sources*</u>
*Commenter believes all de minimus sources should be exempted from the definition of modification and supports the WVMA proposal to add the following to the end of section 2.18, "which does not constitute a de minimus sources and which."*

RESPONSE I. OAQ agrees and believes the proposed language addresses this point.

**COMMENT J.** <u>*Modification – Emission Control Rule Test*</u>
*Commenter believes section 2.18.a expands the scope of the definition of modification and agrees with the WVMA proposal to delete this language.*

RESPONSE J. OAQ believes the commenter is referring to the term "stationary source" and the inclusion of a source subject to an emission rule. See Response IX.H.

**COMMENT K.** <u>*Modification — 6 Pounds Per Hour Threshold Waiver*</u>
*Commenter recognizes that there are a significant number of extremely minor changes that can occur at a source that could exceed the 6 pounds per hour limitation without coming close to the 5 ton per year trigger and supports the WVMA proposal to add the following at the end of section 2.18.b, "unless the permittee demonstrates to the sole satisfaction of the Director that such an increase is less than five (5) tons per year and that the nature and amount of such an increase is insignificant."*

RESPONSE K. See Response I. K.

**COMMENT L.** <u>*Modification — Delete Hazardous Air Pollutant Trigger*</u>
*Commenter supports the WVMA proposal to delete section 2.18.c.*

RESPONSE L. See Response I. L.

**COMMENT M.** <u>*Regulated Air Pollutant — Delete New Criteria*</u>
*Commenter supports the WVMA proposal to delete sections 2.21.c, 2.21.e and 2.21.f and restore this definition to its original form.*

RESPONSE M. See Response I. L.

**COMMENT N.** <u>*Regulated Air Pollutant — Pollutants Applicable to All Source Categories*</u>
*Commenter supports the WVMA proposal to delete the last paragraph of the definition.*

RESPONSE N. See Response I. L.

**COMMENT O.** *Permit Conditions*

*Commenter supports the WVMA proposal to delete "and other documented relevant information" from section 5.11 and to add the following sentence at the end of section 5.11, "Any portions of the permit application (including plans and specifications) that are to be made permit conditions must be specifically identified in the permit itself.*

RESPONSE O. See Response I. E.

**COMMENT P.** *Hazardous Air Pollutants*

*Commenter urges that Regulation 13 not be expanded beyond the current list of hazardous air pollutants set forth in Table 45-13A and supports the WVMA proposal to add the following to the first sentence in section 15.1, "where the person has reason to believe that a hazardous air pollutant is being emitted," and the addition at the end of section 15.1, "Any 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 this section until such time as it has been determined that MACT controls are applicable. In the event EPA determines that MACT controls are applicable to a 112(n) source category, this section shall be applicable only to the HAPs subject to such MACT."*

RESPONSE P. See Response I. B.

**COMMENT Q.** *Construction*

*Commenter agrees with the WVMA language to add the following to the end of section 5.4, "Any changes to an existing stationary source that are subject to permitting should be treated as a modification and not as construction."*

RESPONSE Q. OAQ recognizes there has been some confusion on the issue of "construction" versus "modification." The proposed rule language, however, makes the definition of these two terms consistent. OAQ believes, therefore, that this will no longer be a source of confusion.

**COMMENT R.** *Subchapter II Sources*

*Commenter urges that a provision be added to the scope of Regulation 13 that would make it clear that nonroad engines, nonroad vehicles, motor vehicles and other emission sources regulated under Subchapter II of the federal Clean Air Act have no place in Regulation 13 and supports WVMA proposal to add language to the scope of Regulation 13 stating this.*

RESPONSE R. See Response I. N.

**COMMENT S.** *Voluntary Permits*

*Commenter supports the WVMA suggested change which would reduce the time period for Director action on voluntary permits from 12 months to 6* *months in section 5.6.*

RESPONSE S. OAQ agrees with the suggested revision and has modified the language accordingly.

**COMMENT T.** *West Virginia Code Citation*
*Commenter believes the statutory citation in sections 5.6 and 5.7 is incorrect and should be W.Va. Code §22-5-1 et seq.*

RESPONSE T. OAQ agrees and has made the revision.

## XIV. Commenter: U. S. Environmental Protection Agency, Region III (EPA)

OAQ would note that EPA's comments were made on an earlier draft of the rule (dated July 16, 1999) than the one which was officially filed for public notice in September of 1999. EPA's comments, therefore, sometimes cite the incorrect section of the rule. In reviewing EPA's comments, OAQ has carefully checked to ensure it correctly understands the comment. OAQ's response below will use the correct citation of the rule.

**COMMENT A.** *Section 1.1 – Scope*
*Commenter believes the reference to temporary permit may have to be removed in accordance with comments below.*

RESPONSE A. See Response XIV. II.

**COMMENT B.** *Section 2.1.c – "Actual Emissions"*
*Commenter believes the ability of a source to rely on actual emissions of existing sources with similar operations must be reworded to ensure that the new emission unit can only be compared to other emission units of the same kind which operate under the same operating conditions and production levels.*

RESPONSE B. OAQ agrees and has revised the proposed language accordingly.

**COMMENT C.** *Section 2.6 – "De Minimus Source"*
*Commenter believes the second sentence seems more appropriately placed in a technical support document to the draft rule rather than in the rule itself. Further, the rest of the definition which discusses the implications of being a Tier I source of Table 45-13B and a Tier II source of Table 45-13C does not make sense in the definition section. It also is not clear what is meant by aggregated. Also, it is inappropriate to exempt emissions from a de minimis source in the determination of potential to emit for any rule other than 45CSR13. It is not clear what procedures of "...section 4 to petition agency for a determination of regulatory applicability..." provision is referring to.*

RESPONSE C. Due to OAQ's response to other comments regarding subsection 2.6, much of the language has been eliminated, making it more appropriate in a definitional section. Regarding the comment about Tier I and Tier II and the concept of aggregating, see Response I. A. and I. G., explaining that the OAQ has revised the language to eliminate the Tier I and Tier II lists and has further clarified the language. OAQ agrees with the comment regarding 45CSR14 and 45CSR19 and has removed the language. Regarding subdivision 2.6.b., subdivision 2.6.d. is referring to the permit determination mechanism in subsection 5.13.

**COMMENT D.** *Section 2.13 – "Existing Stationary Source Operating Permit*
*Commenter believes this appears to be a voluntary provision. Is it desirable to limit its availability to only sources which meet the 2.26 [sic] definition of stationary source?*

RESPONSE D. The proposed rule at subdivision 2.24.e allows any source to request a permit under this rule.

**COMMENT E.** *Section 2.18 – "Modification"*
*Commenter cannot comment on the adequacy of proposed changes in emission level cutoffs for determining what is a "modification" without justification by West Virginia on how such levels were established.*

RESPONSE E. The OAQ's revision of the emission increase levels or cutoffs in the definition of "modification" at subdivision 2.17.a potentially decreases the scope of coverage (e.g. permitting) under 45CSR13 and therefore warrants justification for EPA approvability.

OAQ believes that the final definition of "modification" in 45CSR13 as revised pursuant to public comments will not result in a very large change in the number of source modifications being subjected to minor source review and will drop only a relatively small amount of air pollutant discharges from permit coverage. To verify this judgement in a reasonably manageable evaluation process, the OAQ's current 45CSR13 database system was reviewed. This system is currently being used primarily to track permitting action dates and status but contains fields for summarizing total regulated air pollutant emissions from sources granted permits or permit exemptions as well as plant level emission changes associated with certain source modifications.

A review of the data contained in this system (which is still under development) for the last two years of minor source permit actions revealed fairly comprehensive action date tracking; however, only about one-third of the application summaries contain allowable emissions/emission change data at this time. Of approximately 230 permit issuance/determination actions summarized in the database in the November 1997 to November 1999 time frame, approximately 80 contained emission data which could be used to gauge the impact of emission "trigger" level changes in the "modification" definition. Changing the permit "triggering" regulated pollutant emission increase level from 5 tons per year (TPY) to 10 TPY would have resulted in as many as eight (8) of the approximately eighty permits having summarized emission data being exempted from the permitting process (up to 10% of the permits). A review of the total allowable emissions/potential to emit and equivalent or associated emission increases associated with those eight (8) permits as compared to such emissions and changes associated with all of the 80 permits, however, is more informative. Permitted emissions under the 80 permits totaled approximately 7550 TPY with a total emission increase associated with those permits of approximately 4070 TPY.

Total allowable emissions and total emission increases associated with the eight (8) permits which might be dropped from 45CSR13 requirements under a 10 TPY (versus 5TPY) trigger level are 47.4 TPY. These emissions represent 0.6% of the total allowable emissions and only 1.2% of the total emission increases resulting from all 80 permit actions. It is also of interest to compare the average and range of total regulated pollutants (total allowable emissions) associated with all 80 permits compared to those eight (8) permits:

For all 80:

Average amount of regulated pollutants per permit: 94 TPY (Range < 1 to 340 TPY)

For the 8 potentially dropping out of review:

Average amount of regulated pollutants per permit: 5.9 TPY (Range < 1 to 21 TPY)

Assuming the 80 permits for which emissions data were available were representative of the 230 permits/actions summarized for the two-year period (a reasonable assumption based upon review), one could extrapolate the results of this review as follows:

| | With 5 TPY Modification Trigger Level | With 10 TPY Modification Trigger Level |
|---|---|---|
| No. Permits Reviewed Per Year: | 116 | 104 (-12) |
| Total Permitted Amount of Regulated Pollutants Per Year (TPY): | 10,900 | 10,832 (-68) |
| Total Emissions Increase of Regulated | | |

| | | |
|---|---|---|
| Pollutants Per Year (TPY): | >5,860 | >5,792 (-68) |

OAQ believes based upon judgement and the above analysis that the proposed revision to the emission threshold levels in the definition "modification" at subdivision 2.17.a. does not significantly alter the scope and effectiveness of 45CSR13. The administrative and technical staff time saved by the small decrease in minor source permit issuance could be more effectively used in Prevention of Significant Deterioration (PSD) and Title V permitting work.

**COMMENT F.** <u>*Section 2.18.a - "Modification"*</u>
*Commenter believes, as written, this provision appears to be saying that any physical change or change in method of operation to a section 2.26 [sic] stationary source subject to a substantive requirement of an emission control rule is a modification. Is that what was intended? Additionally, what is a facility and why does it need to be listed separately?*

RESPONSE F. The commenter is referring to language in the July 16, 1999 draft of the rule which was omitted from the official proposed version. Likewise, the term "facility" has been deleted in that portion of the rule.

**COMMENT G.** <u>*Section 2.18.d [sic] - "Modification"*</u>
*Commenter believes this provision appears to consider a 10 percent increase of a 45CSR13A pollutant a modification only if, prior to the modification, the source met the 45CSR13A thresholds for that same pollutant. Is this what is intended? Also, because "modification" is defined, it would be more appropriate to use the phrase, ". . . prior to the physical change or change in method in operation," versus ". . . prior to the modification." Also, the terminology "notwithstanding" is confusing — does OAQ mean pre or post 45CSR27 control potential to emit?*

RESPONSE G. The response to the first question regarding the OAQ's intention, is in the affirmative. OAQ agrees with the third sentence and has revised the language accordingly. Regarding the last point, the language in the official proposed rule was changed to remove the term "notwithstanding."

**COMMENT H.** <u>*Section 2.18.f - "Modification"*</u>
*Commenter states the term "source" was changed to "facility," and asks that the term be defined.*

RESPONSE H. OAQ agrees and has restored the original term "source."

**COMMENT I.** <u>*Section 2.18.h.1 [sic]*</u>
*Commenter asks why this provision is necessary and states it appears that*

*such an activity would never trigger a modification as defined by 2.18.b-e [sic]. Also, are there any testing or notification requirements associated with this exception to show that replaced air pollution control equipment is at least as effective?*

RESPONSE I. OAQ notes the subject language is in the current version of the rule, effective April 27, 1994, and states it is necessary to afford sources the flexibility to replace equipment under these conditions without requiring a permit. As far as any testing or notification requirements, there are none explicitly required by the rule, but the OAQ has authority under W.Va. Code §22-5-4 (a) (14) to require a source to submit any information related to this matter.

**COMMENT J.** <u>*Section 2.18.h.4 - "Modification"*</u>
*Commenter believes it must be made clear that increases in throughput or production rates are not exempt if there is an explicit limitation on production rates or throughput in an applicable permit or order.*

RESPONSE J. OAQ agrees and has revised the language accordingly.

**COMMENT K.** <u>*Section 2.18.h.5 [sic] - "Modification*</u>
*Commenter believes it is not clear what is meant by, ". . . provided the source is designed to accommodate such alternative fuel without increasing emissions above the levels provided in this paragraph . . ." Aren't "designed to accommodate" and "staying below modification trigger levels" two separate concepts? If both must be met in order to fall within this provision, perhaps, it should be reworded to clarify that the source must have been designed to accommodate the alternative fuel and that resulting emissions are not above the modification trigger levels.*

RESPONSE K. OAQ believes that the two concepts are not necessarily independent and that the language clearly states that both must be met.

**COMMENT L.** <u>*Section 2.18.h.6 [sic] - "Modification"*</u>
*Commenter believes grammatically this provision should be reworded to be parallel with the other provisions of 2.18.h. Substantively, this provision should clarify that the determination must be made for all regulated air pollutant emissions. Also, the term "grandfathered natural gas compressor engine" must be defined.*

RESPONSE L. OAQ agrees and has revised the language. Also, the term "grandfathered" was removed and new language inserted in the official proposed rule.

**COMMENT M.** <u>*Section 2.20 [sic] - "Potential to Emit"*</u>
*Commenter states that any changes in the 45CSR13 definition of "potential to emit" from the definitions of "potential to emit" in 45CSR14 and 45CSR19*

*cannot be relied on for purposes of netting out of these major NSR requirements. What is meant by "integral to the unit," ". . . measured . . ." and "control device?" In section 2.20.b, what does "add language of nonapplicability" in the parenthetical mean?*

RESPONSE M. OAQ has revised the language to clarify this subdivision of the rule. Subdivision 2.19.a only applies to catalytic converters, whereas subdivision 2.19.b is broader in meaning.

**COMMENT N.** <u>*Section 2.25.a [sic] – "Stationary Source"*</u>
*Commenter asks what is meant by ". . . subject to any substantive requirement of an emission control rule promulgated by the Director?" Also, commenter is unclear what is trying to be accomplished by the language following ". . . provided." Commenter suggests it may make more sense to state in 2.25.a, "Excluding a facility, stationary source or emissions unit . . . of Table 45-13, is subject to any substantive . . . promulgated by the Director."*

RESPONSE N. OAQ responds that the language "subject to any substantive requirement of an emission control rule" generally means subject to a substantive requirement as opposed to a mere procedural requirement.

**COMMENT O.** <u>*Section 2.25 [sic] – "Stationary Source"*</u>
*Commenter cannot comment on the adequacy of proposed changes in emission level cutoffs for determining what is a "stationary source" without justification on how such levels were established.*

RESPONSE O. OAQ does not believe that an analysis is necessary to justify the revised emission levels or cut-offs defining the term "stationary source" at subdivision 2.24.b. The revised provision provides that either a 6 lb/hr <u>or</u> 10 TPY emission rate of a regulated pollutant makes the source a stationary source subject to permitting requirements. The current federally approved version of 45CSR13 contains only the 6lb/hr emissions trigger level. The addition of the 10 TPY can only expand the universe of new or modified sources defined as "stationary sources" and therefore subject to 45CSR13 permit review and does not diminish the coverage or stringency of the current rule.

**COMMENT P.** <u>*Section 2.25.b [sic] – "Stationary Source"*</u>
*Commenter wants an explanation of how the term "potential to discharge" differs from the term "potential to emit" used in the 2.6 definition of De Minimus source.*

RESPONSE P. The term "potential to discharge" was not included in the official proposed rule.

**COMMENT Q.** *Section 2.25.f [sic] – "Stationary Source"*

*Commenter believes grammatically this provision should be reworded to be parallel with the other provisions of 2.25. Substantively, this provision is pretty vague. What if such source exists at a facility with other operating units which make the facility a stationary source? Where is it that such sources are required to keep records of the hours of operation? Are such records required to be submitted to the Director? How will the Director know to revoke? Under what conditions will such revocations or reapplications be required?*

RESPONSE Q. The subject language has been moved to subsection 10.5, a more appropriate location in the rule. Although the language does not explicitly require records to be kept, the Director has authority under W.Va. Code §22-5-4 (a) (14) to require a source to submit such information if deemed necessary. OAQ anticipates the typical situation when revocation, reapplication or modification may occur is when a major source determination is involved or when OAQ receives other information concerning regulatory applicability issues.

**COMMENT R.** *Section 2.28 [sic] – "Volatile Organic Compound"*

*Commenter believes it is unclear whether the specific compounds will be listed or incorporated by reference.*

RESPONSE R. The proposed language now clearly incorporates by reference the federal definition for VOC.

**COMMENT S.** *Section 4.1.b.1.*

*Commenter believes the ". . . or upon the Director's initiative" doesn't make sense in context.*

RESPONSE S. The language in this portion of the rule has been revised to clarify that although the Director may initiate an administrative update, the source must consent to the revised permit.

**COMMENT T.** *Section 4.2.*

*Commenter believes the phrase ". . . any aspect of the permitted source . . ." is vague.*

RESPONSE T. OAQ agrees and has revised the language to be more specific.

**COMMENT U.** *Section 4.2.a.*

*Commenter believes the phrase "but not limited to" should be removed as such determination should be made in a regulatory context.*

RESPONSE U. The official rule version did not contain the language "but not limited to."

**COMMENT V.** <u>*Section 4.2.a.3.*</u>

*Commenter believes it should be clear that only changes dealing with the timing elements of a construction schedule qualify. Changes in the authorized construction schedule as to what is being constructed do not qualify.*

RESPONSE V. OAQ agrees that the intention of this language is to address only changes in the time elements of a construction schedule. The rule has been revised accordingly.

**COMMENT W.** <u>*Section 4.2.a.4.*</u>

*Commenter asks the OAQ to keep in mind that the administrative update likely will not satisfy 45CSR30 reopening requirements which will be required of Part 70 sources.*

RESPONSE W. OAQ understands that although a Class I administrative update will not be subject to public notice under this rule, it may be under 45CSR30.

**COMMENT X.** <u>*Section 4.2.a.5.*</u>

*Commenter believes sources who did not provide accurate information or did something different than what was described in application or what was authorized by the permit should not be eligible for the administrative update.*

RESPONSE X. The Director, under subdivision 4.1.a, may determine that a source is ineligible for an administrative update, and the type of situations mentioned by the commenter may make a source ineligible.

**COMMENT Y.** <u>*Section 4.2.a.6.*</u>

*Commenter believes this provision should exempt removal of air pollution control equipment.*

RESPONSE Y. The official proposed rule does exempt such equipment.

**COMMENT Z.** <u>*Section 4.2.b.*</u>

*Commenter believes the phrase "but not limited to" should be removed as such determination should be made in a regulatory context.*

RESPONSE Z. The official proposed rule does not contain such language.

**COMMENT AA.** <u>*Section 4.2.b.1.*</u>

*Commenter believes changes which affect permit conditions that were relied on by the source to net out of major PSD or major NSR requirements or to be treated as "synthetic minors" for other major source requirements should not be eligible.*

RESPONSE AA. OAQ agrees and believes that subsection 4.2 ensures that no such circumvention will occur.

**COMMENT BB.** *Section 4.2.b.2.*
*Commenter believes other "minor changes" must be defined somehow to ensure that environmentally significant changes will not be eligible.*

RESPONSE BB. There are several reasons why OAQ believes the subject language is adequate to ensure that environmentally significant changes are ineligible as administrative updates. First, as mentioned in the above response, the rule at subsection 4.2 prohibits major sources from circumventing the process. Second, the rule provides that only those changes which fall below the modification "triggers" are eligible under this section. Third, the language in subsection 4.3 states that when the Director believes there is a potential for significant ambient impact, he or she may require more information or require the source to obtain a modification permit. And last, OAQ points out that Class II administrative updates are subject to a 30-day public notice, thus affording persons, including EPA, the opportunity to comment on the proposed change.

**COMMENT CC.** *Section 5.1.b.2. [sic]*
*Commenter believes as written, this section does not flow. The provision should probably be reworded. Commenter also says there does not appear to be a 5.1.b.1.*

RESPONSE CC. Although OAQ is unclear as to which language the commenter is referring to, the language in subsection 5.1 is clear in OAQ's opinion.

**COMMENT DD.** *Section 5.1.c. [sic]*
*Commenter believes the reference to "such" activities is not clear and suggests this provision should be grouped with or immediately follow section 5.1.h.*

RESPONSE DD. OAQ agrees that "such activity" in subdivision 5.1.h is somewhat vague and has revised the language accordingly.

**COMMENT EE.** *Section 5.11.*
*Commenter believes that since some Class I administrative updates may involve revising the permit to implement new requirements, it seems like the Director should be able to impose reasonable conditions for Class I administrative updates.*

RESPONSE EE. OAQ agrees and points out that paragraph 4.1.b.2 authorizes the Director to include reasonable conditions; in addition, language has been added to subsection 5.11 to clarify this point.

**COMMENT FF.** <u>*Section 5.13.*</u>

*Commenter believes the distinction between new and existing stationary sources is not clear. Also, don't emissions from Table 45-13B and 45-13C activities need to be accounted for in some instances? Commenter believes the wholesale exclusion in the phrase "excluding the exemptions in Tables 45-13B and 45-13C" does not seem to capture these instances.*

RESPONSE FF. OAQ has determined there is no reason to distinguish between new and existing sources in this particular subsection. Regarding the exemption of de minimus sources from this subsection, there is no reason for such sources to notify or keep records since they are considered to be very insignificant sources of emissions.

**COMMENT GG.** <u>*Section 6.3.*</u>

*Commenter believes instead of ". . . compliance with such stack test . . ." the language should state ". . . compliance with permit conditions, rules of the commission or W.Va. Code §16-20-1, et seq." Also, what if a permit revision is needed to ensure that allowable throughput capacities or control devices are enforceable? Will the source be put on a compliance plan?*

RESPONSE GG. OAQ agrees with the commenter's first suggestion and has revised the rule accordingly. Regarding the commenter's questions, subsection 6.3 is intended primarily to deal with the permittee's response to the given situation. The language does not address OAQ's actions with regard to permit modification and OAQ intends to make such decisions on a case-by-case basis.

**COMMENT HH.** <u>*Section 7.1.*</u>

*Commenter believes in accordance with federal regulations, the provision should require modeling as a matter of source unless the Director exempts particular constructions or modifications from modeling requirements. Further, the provision should clarify that all modeling will be conducted in accordance with 40CFR51, Appendix W — Guideline on Air Quality Models (GAQM).*

RESPONSE HH. OAQ disagrees that the rule should require modeling as a matter of course and believes that it is sufficient that the Director have authority to require modeling on a case-by-case basis. To require modeling for virtually all Regulation 13 permits would be unduly burdensome on the agency considering that most of the sources obtaining Regulation 13 permits are minor in nature. Regarding the reference to Appendix W, OAQ has revised the rule accordingly but has allowed some discretion to approve alternate models.

**COMMENT II.** <u>*Section 8 —Public Review Procedures.*</u>

(i) *As written, temporary construction and modification permits may not be processed according to the Notice Level A procedure. Until it is demonstrated that such changes are "less environmentally significant" deserved of reduced public participation requirements, the federal requirements for public participation are not met.*

(ii) *Due to their widespread impact for a given source category, General Permits are environmentally significant and should be processed according to the Notice Level C procedure.*

(iii) *To comport with federal public participation requirements, it must be clear that the nonconfidential portions of the permit applications, as well as the engineering evaluation and draft permit are available for public inspection in the affected area.*

(iv) *Section 8.9: the commenter must receive a copy of the public notice too.*

RESPONSE II. (i) OAQ has revised the rule to provide a 30-day public notice for such permits.

(ii) OAQ notes that the official proposed rule does in fact require a 45-day public notice for general permits.

(iii) OAQ believes it is unnecessary for the rule to expressly state that the nonconfidential portions of the application are available for public review, for this is clear pursuant to W.Va. Code §§22-5-10 and 29B-1-1 et seq.

(iv) The current rule does not require that EPA be sent a copy of the public notice, only the draft permit and fact sheet. The proposed rule maintains this approach but changes the fact sheet to an engineering evaluation. Although the rule does not address the issue, OAQ intends to continue its current practice of sending EPA a cover letter which informs EPA of the public comment period, along with the draft permit and engineering evaluation.

**COMMENT JJ.** *Section 11.*
*Commenter proposed disapproval of a similar temporary permitting procedure of the April 27, 1994, version of 45CSR13. These provisions should be modified or removed.*

RESPONSE JJ. See Response II (i) immediately preceding.

**COMMENT KK.** *Section 14.1.*
*Commenter believes this provision should discuss permit issuance*

*procedures for this type of permitting.*

RESPONSE KK. OAQ believes the language in subsection 14.1 sufficiently makes clear that when a permit is required under this subsection, it will be processed in accordance with the remaining provisions of the rule.

**XV. Commenter: West Virginia Environmental Council**

**COMMENT A.** *Commenter appreciates the opportunity to speak at the public hearing. Commenter believes it was fortunate for West Virginia and its citizens that this rewrite process was undertaken as a consensus stakeholders process. The commenter states that although the regulation is less than perfect, the West Virginia Environmental Council stands behind it as a consensus document. Commenter expressed that areas dealing with public participation and notification and pre-permitting construction activity are sources of dissatisfaction and disappointment.*

*Commenter expressed that industry does not need and should not demand special favors in regard to pre-permitting construction activities, nor should legal ads be regarded as adequate notice to ordinary citizens.*

*Commenter is looking forward to the establishment of the citizens advisory council to the Office of Air Quality and advances a proposal for legal and technical advisors to be made available to citizens at no cost to these citizens to assist them through out these arduous processes.*

RESPONSE A. OAQ believes the proposed revisions to the rule pertaining to pre-permitting construction activity and public notice strike an appropriate balance to regulation as stated in W.Va. Code §22-5-1. Also see Response VII.B. Regarding the comment about legal and technical advisors for citizens, OAQ suggests the Advisory Committee discuss appropriate ways for citizens to receive assistance in processes such as rule-making. Lastly, concerning the public notice portions of the rule, OAQ believes the revised language represents a significant improvement in notice requirements for the general public.

**XVI. Commenter: Jeri Hunt, Private Citizen**

**COMMENT A.** *Commenter is concerned about deteriorated air. Commenter expressed concern that levels of particulate matter aggravate asthma and asthma is a big problem in the Kanawha Valley, especially in children and expressed concern that parts of the State are about to be declared out of attainment for ozone. Commenter asked why anybody would want to move here, to a state with a reputation for bad air. Commenter believes we need to give everybody the choice to live in a healthy environment.*

RESPONSE A. The commenter's concerns are general in nature and do not specifically address the proposed rule, although the proposed rule is one of the OAQ's most important tools for the prevention and control of air pollutant emissions into the State's environment.

**XVII. Commenter: Perry Bryant, Private Citizen**

**COMMENT A.** *Commenter expressed appreciation for all the work that the League of Women Voters has done on behalf of the citizens of the Kanawha Valley and West Virginia's air supply in general. Commenter still has real concerns, particularly about the construction prior to a permitting process being adopted and urged the OAQ to monitor that process very closely so that industry does not abuse that ability. Commenter supports Regulation 13 with those caveats.*

RESPONSE A. OAQ is also very pleased with the extent of participation in this process by the League, as well as other representatives of the general public. Regarding the pre-permitting construction issue, OAQ intends to closely monitor this new part of the rule, as well as the other new portions of the rule. See Response VII.B. regarding the pre-permitting issue.

**XVIII. Commenter: Ohio Valley Environmental Coalition**

**COMMENT A.** *Commenter believes they were the only ones asking, "What about our health," and, "What are the impacts of what we are doing here?" Commenter expressed that as far as Regulation 13 is concerned, they are still greatly concerned about the same things they were initially.*

*Commenter is particularly concerned about public notification. Commenter believes the average citizen does not look at legal ads.*

*Commenter believes the allowance of the administrative update gives industry a lot of latitude and is concerned about increases in the threshold levels.*
*Commenter is grateful for the citizens advisory commission and believes citizens will continue to have input. Commenter believes we should start thinking in terms of zero emissions.*

RESPONSE A. See Response XV. A. regarding public notice requirements and the Advisory Committee. Regarding administrative updates, OAQ believes this new portion of the rule will result in better, more detailed permits. Moreover, having the process by which minor permit revisions are made specified in the rule will be helpful to all interested parties. Lastly, see Response XIV.E. and O. regarding threshold levels.

**XIV. Commenter: Robin Godfrey, Private Citizen**

**COMMENT A.** *Commenter thanked citizens who worked in the stakeholder's group. Commenter has two concerns; public involvement and public health. The commenter believes you have to ask the big question, "Is the air going to be dirtier?"*

RESPONSE A. See Response XV.A.

**XX. Commenter: Norm Steenstra, West Virginia Citizen Action Group**

**COMMENT A.** *Commenter applauds the work of the citizens and expressed that all work was done on their own time and with no access outside of DEP to technical expertise.*

*The commenter asks if it is indeed a consensus rule, that everyone stands firm.*

*Commenter urges DEP and industry to make available funds for citizens for technical expertise.*

*Commenter agrees with a previous commenter who thinks it's terrible public policy to begin construction before there is a permit and stated that historically DEP, then and now, bends the rules and permits a facility that they would never have permitted in the beginning.*

RESPONSE A. See Response XV.A.

**XXI. Commenter: Rick Eades, West Virginia Citizens Action Group**

**COMMENT A.** *Commenter expressed there is no way for private citizens to be prepared in a technical or legal manner to properly contribute to the stakeholder's process and believes it might be in everyone's best interest to provide funding for expertise. Commenter expressed concern that an undue amount of time was spent on many, many issues in the process and isn't sure if that was intentional or not.*

*Commenter asks that provisions be revisited in the future as it learns that the public is not being served.*

*Commenter expressed that the citizens bent over backwards in good faith.*

RESPONSE A. See Response XV.A. In addition, OAQ is always willing, to the extent time and resources allow, to educate and assist the public on air issues. The DEP now maintains a Speaker's Bureau which will provide speakers on a given topic to any group of people.

**XXII. Commenter: Vince George, Private Citizen**

**COMMENT A.** *Commenter commended people who had spent a lot more time on the process than himself. Commenter believes it is a reasonable expectation before construction would be undertaken for any kind of new facility that all permits be in place. Commenter also commented on adequate notice and expressed that he did not consider legal ads to be adequate notice.*

*Commenter believes that there isn't an equal playing field and believes the comment that every day is industry day is a fair comment.*

RESPONSE A. See Response XV.A.