

**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 §§22-5-4

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 and to modify a non-major stationary source. This rule also establishes the requirements for obtaining an administrative update to an existing permit, temporary permit or a general permit, and for filing notifications and maintaining records of changes not otherwise subject to the permit requirements of this rule. The rule establishes public participation requirements as well as procedures for the transfer, suspension and revocation of permits.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

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 proposed revisions were initiated by the Division of Air Quality as part of an effort to streamline the permitting program by eliminating unnecessary permitting requirements for insignificant sources, broadening the general permit mechanism, reducing agency review timeframes for permit action, modifying applicability thresholds and reducing application fees for general permits.

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 its June 5, 2002 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. The Council's comments are contained in the attached minutes.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

ADVISORY COUNCIL MEETING MINUTES

Wednesday, June 5, 2002

DMR Conference Room - 10 McJunkin Road, Nitro, WV

ATTENDEES:

Advisory Council Members:

Larry Harris
Bill Samples
Rick Roberts
Lisa Dooley
Bill Raney

DEP:

Bill Adams	Ken Ellison
Lewis Halstead	Bill Brannon
James Martin	Mike Zeto
Brett Loflin	Greg Adolfson
Allyn Turner	Jim Mason
Charles Sturey	Karen Watson

Citizens:

Rebecca Robertson, NiSource

The meeting was called to order at 9:00 a.m. by William E. Adams, Jr., General Counsel.

Welcome/Opening Remarks - Bill Adams

Bill Adams opened by informing everyone that in Secretary Callaghan's absence, he would chair the meeting. Bill further explained that Secretary Callaghan was preparing for his appearance before a Congressional Committee, he sends his regrets. Bill further announced that Director Ellison was present and later, Director Turner as well as Chief James Martin. There was an introduction of the Advisory Council

members, an explanation of what group or interest each member represents.

PRESENTATION OF PROPOSED RULES

Division of Mining and Reclamation

Charles Sturey presented rules 38CSR2 and 38CSR4 to the Council. Mr. Raney asked what the genesis of the coal dam safety rule was. Lewis Halstead explained that the changes were being made mostly due to recent flooding and DEP's experience with a large coal dam near Welch. Mr. Harris inquired generally whether the language in the rules that says DEP's goal is to "restore and protect the environment" should place "protect" as the first priority. This suggestion was taken under advisement.

Division of Water Resources

Bill Brannon presented rules 47CSR20 and 47CSR26 to the Council. He stated that general stormwater fees would be \$300 rather than the \$500 suggested by EPA. An inquiry was made as to how linear footage for water/sewer lines would be used to calculate whether 1-3 acres would be disturbed in order to qualify for a general permit. Director Turner stated that the agency would rely on the applicant's application information but that some clarification would be appropriate. Director Turner also agreed that clarification was needed on whether a \$300 renewal fee would be required and whether it would be based on flow calculations. She noted also that an agreement similar to that with the coal division would be reached with the Office of Oil & Gas to issue the general permits and that Water and Oil & Gas would split the fee.

Office of Innovation

Greg Adolfson announced that he was now employed at the Office of Innovation, but still worked on the Stream Partners program. He presented rule 60CSR4 to the Council dealing with the Stream Partners Program Grants. Mr. Adolfson also gave a brief history of the Office of Innovation and stated that the Office was directed toward more forward thinking instead of reaction oriented.

Division of Waste Management

Ken Ellison presented rules 33CSR20 and 33CSR26 to the Council. Mr. Ellison explained that these two rules are now identical to the federal regulations.

Environmental Enforcement

Mike Zeto presented rule 33CSR8 to the Council.

Mr. Zeto explained that this was a new rule dealing with establishing a mechanism and requirements for the permitting and use of sludge (specifically not sewage sludge) or other materials that have beneficial properties similar to sewage sludge. Mr. Samples questioned whether the requirement that the sludge comprise at least 50% of the applicant's agricultural requirements was too stringent and whether the Secretary should be allowed to waive this requirement. Mr. Zeto responded in the negative and also stated that the sludge must be shown to have significant nutrient value before DEP would approve its use.

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James Martin was introduced as the Chief of the Office of Oil and Gas.

Brett Loflin (Oil and Gas Conservation Commission) presented rules 39CSR1 and 39CSR2 to the Council. Mr. Loflin explained that 39CSR1 is currently a procedural rule but will be filed as a legislative rule because it contains substantive legal requirements.

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Jim Mason presented rules 45CSR1, 16, 26 and 34 to the Council.

Karen Watson presented rules 45CSR13, 25, 30 and 33 to the Council.

Rick Roberts inquired as to whether there would be a budget hole created due to the reduction of fees in the presented rules. Ms. Watson explained that the calculations had not been done regarding this subject but that as soon as the figures were available, they would be presented to the Council. Mr. Adams noted that as with all rules, a fiscal note would be prepared containing this analysis.

OTHER BUSINESS

Upon conclusion of the rules presentations, it was determined that the rules would need to be filed with the Secretary of State's office by June 12, 2002 to begin the thirty-day comment public comment/hearings period.

The Council agreed that proposed rules should be submitted to the Council members via e-mail in the future so that they can be distributed to other interested parties prior to meetings. Moreover, the proposals should be sent more than 3 days before the Council meeting. Past practice apparently gave

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June 12, 2002

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little or no time to review the proposals prior to the meeting. Mr. Adams agreed that this would be an appropriate change for future Council meetings.

Bill Samples suggested that action be taken as soon as possible regarding the predictability of permitting. Mr. Adams assured him and the Council that is a DEP priority and noted that all divisions and offices were under the Secretary's mandate to respond to permit applications within 24-48 hours.

The meeting adjourned at 12:07 p.m.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue

Charleston, WV 25311-2599

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & 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 will have minimal effect on the costs to the Division and any implementation costs will be covered under previous budget estimates. However, the agency notes its revenues from application fees are expected to decline by about \$25,000 with the proposed reduction in fees for general permits under section 12 of the rule. Although two years ago the agency believed a reduction in general permit fees would be harmful, the agency believes it can develop future general permits in a more cost-effective manner and that it is appropriate to provide an incentive for sources to opt into the general permit program.

3. Objectives of These Rules:

This rule, originally promulgated in 1974 and amended in 1994 and 2000, sets forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct, modify and operate a new stationary source which is not a major stationary source and to make modifications which are not major modifications to an existing major stationary source. The rule establishes public participation requirements as well as procedures for the transfer, suspension and revocation of permits. These rule revisions are designed to promote further streamlining of Rule 13 while continuing to ensure protection of air quality.

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"

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 adverse 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 Table 45-13B for "de minimis" sources and changes to the permitting threshold criteria, as well as reduction in application fees for sources eligible for general permits.

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: _____

Signature of Agency Head or Authorized Representative:

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FILED
2002 JUN 12 P 4: 42
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

§45-13-1. General.

1.1. Scope. -- The purpose of this rule is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source and to relocate non-major stationary sources within the state of West Virginia. 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~~ Secretary may regulate such sources pursuant to another rule promulgated for that purpose.

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

1.3. Filing Date. -- ~~May 26, 2000.~~

1.4. Effective Date. -- ~~June 1, 2000.~~

1.5. Former Rules. -- This legislative rule amends and replaces 45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants,

Notification Requirements, Administrative Updates, Temporary Permits, General Permits and Procedures for Evaluation" which was filed on ~~April 27, 1994~~ May 26, 2000, and which became effective ~~April 27, 1994~~ June 1, 2000.

§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~~ Secretary may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

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

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

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

2.4. "Commenced" means that an owner or operator has all necessary preconstruction approval or permits and has undertaken a continuous program of physical site preparation, construction, modification, or relocation, or that a binding general construction contract has been entered into which obligates one (1) party to such contract to perform the physical work involved in such program of construction, modification, or relocation of a source or emissions unit. Interruptions resulting from acts of God, strikes, or other matters beyond the control of the owner shall be disregarded in determining whether a construction, modification, or relocation program is continuous unless otherwise specifically provided within this rule.

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

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

by the ~~Director~~ Secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.17.f.4. An increase in throughput or production rate if such increase does not exceed the design capacity of the source or emissions unit, or increase emissions above the levels provided in this paragraph and there is no explicit limitation of production rate or throughput in an applicable permit or order; or

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

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

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

2.19. "Potential to emit" means the maximum design capacity of a stationary source or emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source or emissions unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable by the Director Secretary and U. S. EPA in any permit or consent order. Secondary emissions shall not be included in any determination of a stationary sources potential to

emit.

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

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

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

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

2.20.b. Any air pollutant for which a national ambient air quality standard has been promulgated including particulate matter (PM₁₀), sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone and lead or lead compounds;

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

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

2.20.e. Any air pollutant subject to a new source performance standard (NSPS) promulgated

under section 111 of the Clean Air Act [including section 111(d)], which requires new and modified sources to satisfy emissions standards, work practice standards and other requirements;

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

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

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

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

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

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

2.22.c. For a municipality, State, Federal, or other public entity: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive

officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of U.S. EPA); or

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

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

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

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

2.24.b. Discharges or has the potential to discharge more than six (6) pounds per hour ~~or~~ and ten (10) tons per year, or has the potential to discharge more than 144 pounds per calendar day, of volatile organic compounds or any regulated air pollutant for which the Director has promulgated an ambient air quality standard;

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

2.24.d. Discharges or has the potential to

discharge any air pollutant(s) listed in Table 45-13A in the amounts shown in Table 45-13A or greater; or

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

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

~~2.26. "Toxic air pollutant" means any of the following substances which are included on Table 45-13A: Acrylonitrile, Allyl chloride, Arsenic Compounds (Inorganic), Asbestos, Benzene, Beryllium, 1,3-Butadiene, Carbon tetrachloride, Chloroform, Ethylene dichloride, Ethylene oxide, Formaldehyde, Lead or Lead Compounds, Mercury, Methylene chloride, Propylene oxide, Trichloroethylene, Vinyl chloride, Vinylidene chloride.~~

~~2.27. 2.26. "Volatile Organic Compounds" (VOC) means the term as defined in 40 CFR §51.100 (s).~~

~~2.28. 2.27. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §§22-5-1 et seq. and any rules promulgated thereunder.~~

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

3.1. The owner or operator of a stationary source may be required by the ~~Director~~ Secretary to collect, report and maintain data on the operation of such stationary source. The ~~Director~~, Secretary or his duly authorized representative, may request reports of such data in a reasonable manner and detail as the ~~Director~~ Secretary may specify. If requested, such reports shall be filed within thirty (30) days of the end of the

established reporting period. However, reports on such data shall not exceed one (1) per month.

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

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

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

4.1.b. Within sixty (60) days from receipt of a complete application for an administrative update, the ~~Director~~ Secretary 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 reasonable conditions in addition to those requested;

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

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

4.1.c. Should the ~~Director~~ Secretary deny an administrative update request, he or she shall do so in writing, providing the reasons therefore. The denial is not subject to public notice or comment nor is it subject to appeal under W. Va. Code §§22-5-14 or 22B-1-7. Any

permit which is issued as amended pursuant to this section may be appealed under W. Va. Code §§22-5-14 or 22B-1-7.

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

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

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

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

4.2.a.1. Correction of typographical errors;

4.2.a.2. Corrections or updates to mailing addresses, contact personnel or telephone numbers if contained in the permit, or change in

the name of the permittee which does not involve any change in the ownership or operational control of a permitted source or unit;

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

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

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

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

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

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

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

4.2.b.1. Change in a permit condition as necessary to allow changes in operating parameters, emission points, control equipment or

any other aspect of a source which results in an increase or no change in the emission of any existing regulated air pollutant or any new regulated air pollutant; or

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

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

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

4.5. The permittee may implement the changes addressed in the request for a Class I administrative update immediately upon submittal of the request. After the permittee makes the requested Class I changes, and until the Director Secretary takes any of the actions specified in subdivision 4.1.b, the permittee must comply with the proposed changes to the permit. During this time period, the source need not comply with the existing permit terms and conditions it seeks to change. However, if the permittee fails to comply with its proposed permit change during this period, the existing permit terms and conditions it seeks to modify may be enforced against it. Should the permittee implement such a change

immediately, the permittee will do so at its sole risk and the permittee shall not assert as any argument, including legal or equitable, in any proceeding (administrative, civil or criminal) that such action occurred.

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

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

5.1.a. Clear land;

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

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

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

5.1.e. Demolish existing structures, provided that all activity must comply and comport with all existing state and federal regulations including, but not limited to, asbestos requirements pursuant to 45CSR15, applicable National Emission Standards for Hazardous Air Pollutants pursuant to section 112 of the Clean Air Act, applicable requirements pursuant to the

Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.) and applicable solid waste requirements;

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

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

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

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.

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 Secretary and shall not construct, modify or relocate the stationary source until the Director Secretary issues a permit approving of the construction, modification or relocation. The application shall contain sufficient information as, in the judgment of the Director Secretary, will enable the Director Secretary to determine whether the source construction, modification, or relocation will be in conformance with the provisions of any applicable rules promulgated by the Director Secretary. Such information may include, but not be limited to, site information, plans, descriptions,

specifications, and drawings relating to the proposed construction, modification, or relocation of the source, the manner in which it will be operated, maximum emission rates and emissions control equipment data.

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

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

5.7. Within one hundred eighty (180) days of the receipt of a complete permit application for construction or modification of a stationary source, within 90 days of the receipt of a complete registration application for a Class II general permit, within 60 days of the receipt of a complete application for a temporary permit, within 45 days of the receipt of a complete registration application for a Class I general permit or within forty-five (45) days of receipt of a complete application for relocation of a stationary source, the Director Secretary shall issue such permit or registration unless a determination is made that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment

or maintenance of an applicable ambient air quality standards, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code §22-5-1 et seq., in which case an order for the prevention of such construction, modification, or relocation shall be issued. The ~~Director~~ Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship.

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

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

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

5.11. The ~~Director~~ Secretary may impose

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

5.12. The ~~Director~~ Secretary may develop and issue ~~facility-wide~~ Class I and Class II 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.

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

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

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

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

5.15. Any person holding a permit issued pursuant to subsection 5.5 may make a written request to the ~~Director~~ Secretary for a cancellation of such permit. If granted by the ~~Director~~ Secretary, such a cancellation shall not excuse any violation of the permit terms or

conditions prior to the ~~Director's~~ Secretary cancellation of such permit. In no case shall such a permit cancellation become effective until the permittee and U.S. EPA are provided with a sixty (60) day written notice of such a permit cancellation.

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

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

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

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

§45-13-7. Modeling.

7.1. Any source required to obtain a permit pursuant to this rule may be required to conduct modeling to assist the ~~Director~~ Secretary 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~~ Secretary.

§45-13-8. Public Review Procedures.

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

8.3. Notice Level A.

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

8.4. Notice Level B.

In addition to the notice requirements under subsection 8.3, for ~~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~~ Secretary 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 and Class I general permits are not subject to public notice. No construction, modification or operating permit shall be issued to any applicant until at least ~~forty-five (45)~~ thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and the proposed start-up date for the source. Additionally, at the ~~Director's~~ Secretary's discretion, the applicant may be required to place a commercial display advertisement as set forth in subdivision 8.4.a.

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

8.5. Notice Level C.

In addition to the notice requirements under subsection 8.3, for ~~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~~ Secretary shall place a Class I legal advertisement of the agency's intent to issue in a newspaper of general circulation in the area where the source is or will be located. No permit shall be issued to any applicant until at least ~~forty-five (45)~~ thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and the proposed start-up date for the source. Additionally, the applicant shall be required to place a commercial display advertisement as set forth in subdivision 8.4.a. and a sign as set forth in subdivision 8.5.a.

8.5.a. At any time prior to the Secretary's placement of a Class I legal advertisement or within three (3) working days of the Secretary's placement of the advertisement, the ~~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~~ Division of Air Quality permitting section telephone number for additional information.

8.6. At the ~~Director's~~ Secretary'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.~~

~~8.8.8.7.~~ The ~~Director~~ Secretary shall, prior to issuance of any permit subject to public notice under subsections 8.4 or 8.5, prepare an engineering evaluation supporting his or her stated intent to issue such a permit and shall transmit to U. S. EPA and any other interested party which so requests, a nonconfidential copy of the engineering evaluation and a draft copy of the

permit which is proposed for issuance. Concurrently, the ~~Director~~ Secretary shall notify the public through a Class I legal advertisement in accordance with the provisions of subsections 8.4 or 8.5.

~~8.9.~~ 8.8. The ~~Director~~ Secretary shall review and appropriately address any comments received from the public and U. S. EPA prior to permit issuance.

~~8.10.~~ 8.9. Public notice of any proposed new or revised general permit, Class I or Class II, must be conducted by the agency in accordance with the provisions of subsection 8.4. The ~~Director~~ Secretary shall, prior to issuance or revision of any general permit, prepare a rationale document supporting his or her stated intent to issue or revise such general permit and shall transmit to U. S. EPA and any other interested party which so requests, a nonconfidential copy of the rationale document and a draft copy of the general permit which is proposed for issuance or revision. The ~~Director~~ Secretary shall review and appropriately address any comments received from the public and U. S. EPA prior to the issuance or revision of any general permit.

§45-13-9. Public Meetings.

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

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

9.3. At a reasonable time prior to such meeting, the ~~Director~~ Secretary shall provide appropriate information to news media in the area where the stationary source or proposed stationary

source is located or to be located or otherwise provide notice of the meeting.

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

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

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

~~Director's~~ Secretary's request. If construction or modification of a stationary source is discontinued for a period of eighteen (18) months or longer, the ~~Director~~ Secretary may suspend or revoke the permit or general permit registration.

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

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

10.5. A source which has not operated at least 500 hours in one 12-month period within the previous five (5)-year time period may be considered permanently shutdown, unless such source can provide to the ~~Director~~ Secretary, with reasonable specificity, information to the contrary. All permits or general permit registrations may be modified or revoked and/or reapplication or application for new permits may be required for any source determined to be permanently shutdown.

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

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

approval is being granted, and any conditions to be imposed on the approved activity.

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

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

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

~~Director~~ Secretary immediately thereafter.

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

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

§45-13-12. Permit Application Fees.

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

§45-13-13. Inconsistency Between Rules.

13.1. In the event of any inconsistency between this rule and any other rule of the ~~Director~~ Secretary, such inconsistency shall be

resolved by the determination of the ~~Director~~ Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

§45-13-14. Statutory Air Pollution.

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

§45-13-15. Hazardous Air Pollutants.

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

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

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

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

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

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

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

TABLE 45-13A

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

TABLE 45-13B

DE MINIMUS DE MINIMIS SOURCES

1. Air compressors and pneumatically-operated equipment, including hand tools; instrument air systems (excluding fuel-fired compressors); emissions from pneumatic starters on reciprocating engines, turbines or other equipment; and periodic use of air for cleanup (excluding all sandblasting activities).
2. Air contaminant detectors or recorders, combustion controllers or shutoffs.
3. Any consumer product used in the same manner as in normal consumers' use, provided the use results in a duration and frequency of exposure which are not greater than those experienced by consumers and which may include, but not be limited to, personal use items; janitorial cleaning supplies; office supplies; and supplies to maintain copying equipment.
4. Bathroom/toilet vent emissions.
5. Tobacco smoking rooms and areas.
6. Batteries and battery charging stations, except at battery manufacturing plants.
7. Bench-scale laboratory equipment used for physical or chemical analysis, excluding lab fume hoods or vents.
8. Routine calibration and maintenance of laboratory equipment or other analytical instruments.
9. Boiler water treatment operations, excluding cooling towers.
10. Portable brazing, soldering, gas cutting or welding equipment used as an auxiliary to the principal equipment at the source.
11. CO₂ 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.

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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 rendering cookers, boilers, heating plants, incinerators and electrical power generating equipment.
26. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.
- ~~27. Maintenance equipment used for surface coating, painting, dipping or spraying operations, excluding those that will emit VOCs or hazardous air pollutants.~~
- ~~28:~~27. Fire suppression systems.
- ~~29:~~28. Firefighting equipment and the equipment used to train firefighters and emergency response individuals, which is subject to 45CSR6 and complies with 45CSR15.
- ~~30:~~29. Single-use flares used solely to indicate danger to the public.
- ~~31:~~30 Hand-held applicator equipment for hot melt adhesives with no ~~VOC~~ VOCs or hazardous air ~~pollutant~~ pollutants in the adhesive formulation.
- ~~32:~~ 31. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.
- ~~33:~~32. Humidity chambers.
- ~~34:~~ 33. Hydraulic and hydrostatic testing equipment.
- ~~35:~~ 34. Mobile internal combustion engines used for landscaping purposes.
- ~~36:~~ 35. Laser trimmers using dust collection to prevent fugitive emissions.
- ~~37:~~ 36. Laundry activities, excluding dry-cleaning and steam boilers.
- ~~38:~~ 37. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

39. 38. Oxygen scavenging (de-aeration) of water.
- ~~40. 39.~~ 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: On-site plant maintenance and upkeep activities, including, lawn care, weed control, pest control, general repairs, cleaning, painting, surface coating, welding, plumbing, grinding, cutting, woodworking, janitorial activities, re-tarring roofs, installing insulation, and paving parking lots, provided that these activities are not conducted as part of a manufacturing process and are not related to the source's primary business activity; provided further, that for cleaning, surface coating and painting activities, the source is not subject to VOC or HAP control requirements and the source minimizes the generation of fugitive emissions of any regulated air pollutants; and provided further, that the source complies with the asbestos requirements in 45CSR15.
40. Commercial and residential maintenance and upkeep activities occurring at a building, residence or other structure, including lawn care, weed control, pest control, general repairs, cleaning, painting, surface coating, welding, plumbing, grinding, cutting, woodworking, janitorial activities, re-tarring roofs, installing insulation, and paving parking lots, provided that these activities are not conducted as part of a manufacturing process; provided further, that for cleaning, surface coating and painting activities, the source is not subject to VOC or HAP control requirements and the source minimizes the generation of fugitive emissions of any regulated air pollutants; and provided further, that the source complies with the asbestos requirements in 45CSR15.
41. Portable electrical generators that can be moved by hand from one location to another. "Moved by hand" means that it can be moved without the assistance of any motorized or nonmotorized vehicle, conveyance or device.
42. Process water filtration systems and demineralizers.
- ~~43. 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. 43.~~ Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.
- ~~45. 44.~~ Shock chambers.
- ~~46. 45.~~ Solar simulators.
- ~~47.46.~~ Steam cleaning operations, excluding hazardous air pollutant emissions.
- ~~48.47.~~ Steam leaks.
- ~~49.48.~~ Steam vents and safety relief valves, provided that such valves shall be included in any permit application that may otherwise be required under this rule.
- ~~50.49.~~ Storage tanks, reservoirs and pumping and handling equipment of any size containing soaps, vegetable oil, animal grease or fat and aqueous salt solutions, provided appropriate lids and covers are utilized, excluding rendering plants.
- ~~51.50.~~ Storage tanks, vessels and containers holding or storing liquid substances that will not emit any regulated air pollutant.

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- ~~52.51.~~ Vents from continuous emissions monitors and other analyzers.
- ~~53.52.~~ Operation of groundwater remediation wells, including emissions from the pumps and collection activities.
This does not include emissions from air-stripping treatment or storage.
- ~~54.53.~~ Log wetting areas that are using only water.
- ~~55.54.~~ Log flumes.
- ~~56.55.~~ The storage, handling and handling equipment for bark and wood dust not subject to 45CSR7.
- ~~57.56.~~ Solid waste dumpsters.
- ~~58.57.~~ Ozone generators used in water treatment facilities.
- ~~59.58.~~ Storage vessels having less than 10,567 gallons capacity containing petroleum or organic liquids with a vapor pressure of 1.5 psia or less at storage temperature, provided that the emissions from all such organic liquid storage tanks, in the aggregate, are less than 2 tons per year for hazardous air pollutants or VOCs.
- ~~60.59.~~ A source that is not major that emits only nonprocessed fugitive emissions (other than haul roads).