

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3 □

Do Not Mark In This Box

RECEIVED

02 JUL 29 PM 4:54

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

AGENCY: WV DEP - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13

TITLE OF RULE BEING AMENDED: 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"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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



Authorized Signature

17-30

SCANNED

QUESTIONNAIRE

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

DATE: July 26, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Air Quality
7012 MacCorkle Avenue, Southeast
Charleston, West Virginia 25304

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

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 12, 2002

b. What other notice, including advertising, did you give of the hearing?
Class I legal advertisement; Charleston Daily Mail & Charleston Gazette
Sent a copy of the Public Notice to our agency mailing list
Public Notice placed on Division's web site

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Hearing - July 15 2002 Public Comment Period Ended - July 15, 2002

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)

July 26, 2002

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

John A. Benedict, Deputy Director
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Phone: (304) 926-3647

Fax: (304) 926-3637
jbenedict@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 §§22-5-4

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
Lewis Halstead
James Martin
Brett Loflin
Allyn Turner
Charles Sturey

Ken Ellison
Bill Brannon
Mike Zeto
Greg Adolfson
Jim Mason
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 rule 47CSR26 to the Council. He stated that general stormwater fees would be \$300 rather than the \$700 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.

Office of Oil and Gas

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.

Division of Air Quality

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

DEP Advisory Council Minutes

June 12, 2002

Page 4

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:

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. The designation of Class I or Class II for a general

permit shall be made at the time the permit goes through public comment and adoption for the source category governed by the general permit.

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

5.13. The owner or operator of any stationary source which adds an additional emissions unit or makes a change in the method of operation which results in an emissions increase, or in the discharge of a new regulated air pollutant, in an amount below the levels which require a permit to modify, excluding the 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 issue in a newspaper of general circulation in the area where the source is or will be located, provided that applications for Class I administrative updates and Class I general permit registrations are not subject to public notice. No construction, modification or operating permit shall be issued to any applicant until at least ~~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. Within one week prior to the Secretary's placement of a Class I legal advertisement of intent to issue or within three (3) working days of the Secretary's placement of the advertisement, the 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. Within one week prior to the Secretary's placement of a Class I legal advertisement of intent to issue or within three (3) working days of the Secretary's placement of the advertisement, the ~~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. The applicant must post the sign for the duration of the public notice period.

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 application fees. The provisions of subdivision 3.4.b of 45CSR22 relating to additional fees shall not be applicable to sources applying for Class I general permits but shall be applicable to sources applying for Class II general permits. Applications for permits under section 4 shall be subject to the fee

provisions of section 4.

§45-13-13. Inconsistency Between Rules.

13.1. In the event of any inconsistency between this rule and any other rule of the ~~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.

45CSR13

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.

45CSR13

- ~~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).

ORIGINAL

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION 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
Sources 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 Air
Quality, Conference Room, 7012 MacCorkle Avenue, S.E.,
Charleston, West Virginia, commencing at 6:02 p.m., on the
15th day of July, 2002, pursuant to notice.

P R O C E E D I N G S

1
2 MS. WELSH: We will now begin the public
3 hearing for 45CSR13. Permits for construction,
4 modification, relocation and operation of stationary
5 sources of air pollutants, notification requirements,
6 administrative updates, temporary permits, general permits
7 and procedures for evaluation.

8 The purpose of this rule is to set forth
9 the criteria for obtaining a permit to construct and
10 operate a new stationary source which is not a major
11 stationary source and to modify a non-major stationary
12 source. The proposed revisions were initiated by the
13 Division of Air Quality as part of an effort to streamline
14 the permitting program by eliminating unnecessary
15 permitting requirements for insignificant sources,
16 broadening the general permit mechanism, reducing agency
17 review time frames for permit action, modifying
18 applicability thresholds and reducing application fees for
19 general permits.

20 It is now your opportunity to provide
21 public comments on 45CSR13. Is there anyone who would
22 like to comment on this rule?

23 MR. HANNA: Steve Hanna, West Virginia
24 Department of Agriculture. We would like to thank the

1 Division of Air Quality for the cooperation that we have
2 received from the department as well as the farmers in the
3 poultry industry in the last month or so with the issuance
4 of temporary permits for incineration of normal mortality
5 poultry.

6 It's been extremely beneficial in the
7 holding down of the avian anthoids of which we have
8 experienced in the poultry area of the state. We have two
9 recommendations and I'll give those to you in written
10 form.

11 But we would like to again, thank the
12 division for the kind cooperation we have received. And
13 basically support the rules that have been filed. But we
14 have two have small recommendations for change. Thank
15 you.

16 MS. WELSH: Okay. Thank you. Are there
17 other comments on 45CSR13?

18 MS. LEWIS: And I will give a written
19 copy, also. A few years ago I was one of many
20 participants in a stake holder process to rewrite, update
21 and clarify regulations governing air quality. It was
22 Number 13 that caused the most grief and took the most
23 time to review. I think we spent 18 months on it. Does
24 that sound familiar?

1 It took the most time to review the
2 governing process of permitting, not the comparatively
3 technical issues addressed in many other regulations. I
4 am pleased to see that this year's amendment drafted
5 without any discernable public input until this process
6 and we even tagged many of the changes made during the
7 stake holder process.

8 However, I do have several concerns, which
9 I intend to share with you. Section 2.17(a) references
10 emission increases and changes the standard to or more
11 than 144 pounds a day, which on my calculator works out to
12 52,560 pounds per year or 26 tons, which is a substantial
13 increase over the otherwise previous limit of ten tons per
14 year.

15 There is no justification in this increase
16 and that number should be deleted. That number should
17 also be deleted in Section 2.24(b). I am unsure why
18 Section 2.26 has been deleted, which defines toxic air
19 pollutants. And I believe it should be retained in the
20 regulation.

21 Section 5.7, which shortens the time frame
22 for issuing permits may or may not be acceptable to the
23 environmental counsel as we are not convinced that the
24 Division of Air Quality has the resources to implement it

1 properly without moving too quickly on some permits.

2 The language regarding general permits
3 seems to offer too much discretion to the secretary and
4 there is no confidence that the general permit process
5 will protect public health of our environment as
6 envisioned in this change.

7 This is Section 5.12(a). Remember that
8 regulations should be written so that no matter who the
9 secretary is there will be consistency in the agency
10 standards and ability to protect the public. This should
11 not be written with the current officeholder in mind.

12 Finally, we believe that all permit
13 holders should pay a fee as part of the permit
14 application. A fee of \$250 may be too high for a marginal
15 company, but if no money is available, perhaps the company
16 is too under capitalized to maintain itself and its
17 pollution control efforts and therefore, a small fee
18 should be restored.

19 MS. WELSH: Are there other comments on
20 45CSR13?

21 MR. SAMPSON: Yes, ma'am. Fred Sampson,
22 Clay County. On Page 11, Item 6.1, it right now states
23 that the secretary may specify the requirements. And I
24 would like that to read, be rewritten to the secretary,

1 whatever the secretary specifies shall be conducted to
2 determine compliance.

3 On 6.2 now says the secretary may request.
4 And I would like that to be revised to read that for cause
5 the secretary shall request. On Page 14, 11.1, if you
6 will hang with me for a minute, there is no -- for issuing
7 a temporary permit for a limited time period without
8 applying for construction permit.

9 And there is no date, number of days,
10 number of months, number of years that this temporary
11 could be issued, the temporary permit. And I would like
12 that to be re-written so that in other temporary purposes
13 for a period of time not to exceed 90 days without
14 applying for construction permit.

15 Page 16, all of the paragraphs, 15.1
16 through 15.3, these paragraphs need to be revised so that
17 any hazardous air pollutant is first recognized and
18 acknowledged and they shall be limited to controls that
19 will protect public health for those who handle, ship,
20 move, touch or breath the hazardous pollutant.

21 This is all going to be given to you in
22 writing here, whatever I'm saying here. I'm revising it a
23 little bit as I talk. On the 15.3, I would like that
24 whole thing to be revised so that it says that any source

1 or source category that has been subject to analysis
2 pursuant to Section 11.2 deleted.

3 And the federal clean air act is subject
4 to all limitations and controls on hazardous air
5 pollutants that is required to protect the health and
6 safety of those that come in contact with the air
7 pollutant. This section is applicable to all 11.2 (n)
8 source or sources.

9 The secretary will provide the requirement
10 for the receipt of an application that fully identifies
11 the hazardous air pollutant. That was not really
12 identified correctly.

13 Yes, 4513(b), Item 12 -- 13(b), Item 12,
14 lists combustion emissions from propulsion of mobile
15 sources. It doesn't tell us what mobile sources is. It
16 could be one of those wee little scooters the kids ride.
17 I want that identified.

18 Item 25, I'll read it now. Equipment used
19 exclusively to slaughter animals excluding other equipment
20 at slaughterhouses such as rending cookers, boilers,
21 heating plants, incinerators and electrical powered
22 generating equipment, I want you to eliminate and delete
23 the word incinerators, because there is nothing that
24 describes what is going to be put into those incinerators.

1 My big thing in life is when you mix and
2 burn you don't know what new thing you are going to
3 create. So I don't like for this incineration to be
4 allowed unless it is described exactly what is going to be
5 incinerated. And it is not clear in this statement.
6 That's all for that one.

7 MS. WELSH: Are there any other comments
8 on 45CSR13?

9 MR. DAWLEY: Yes. I'm Joe Dawley. I'm
10 representing the Independent Oil and Gas Association of
11 West Virginia. And IOGA has written comments that we
12 would like to submit. I would also like to just verbally
13 support the DAQ's efforts to help to streamline reg 13 and
14 in particular the revisions to the curbing threshold to 6
15 pound per hour and 110 tons per year or more than 144
16 pounds per day.

17 These are positive changes in the air
18 permeating program that allows small sources to be
19 introduced without delays that are tended to the
20 permeating process and will aid West Virginia businesses
21 to have the flexibility to have new operations or make
22 minor changes to existing operations in a timely manner.

23 IOGA also can generally support the
24 division of the two classes of general permitting.

1 However, because of the unclarity on what a Class 1
2 general permit might be and a Class 2 general permit might
3 be, IOGA requests that the DAQ provide some more
4 clarification of what types of sources may fall within
5 these categories of sources.

6 And if it is a significant change perhaps
7 provide the public another opportunity to comment on what
8 these Class 1 and Class 2 sources may be. IOGA also has
9 some general comments on the particular revisions that
10 were made to the rule as well as some changes that were
11 not made to the rule that IOGA would like to for the DAQ
12 to consider. So with that, those are my comments.

13 MS. WELSH: Are there any other comments
14 on 45CSR13? If not, then this hearing is now closed for
15 45CSR13.

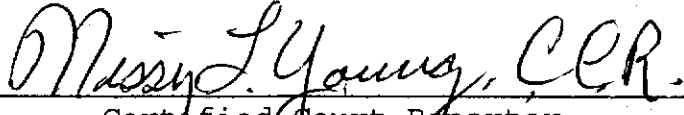
16 (WHEREUPON, the public hearing
17 was concluded.)

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION 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
19th day of July, 2002.



Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

July 15, 2002

**WVA Dept. of Environmental Protection
West Virginia Dept. of Air Quality
7012 MacCorkle Ave., SE
Charleston, WV 25304-2943
Attn Stephanie Timmermeyer, Director.
Subj: Comments to Legislative Rules, WVA Code 22-5-4.**

**45CSR 34 "Emission Standards for Hazardous Air
Pollutants For Source Categories Pursuant to 40CFR 63"**

**45-34-1, 1.1, The last two sentences state: "It is the intent of the
Secretary to adopt..." , "It is also the intent of the Secretary to adopt"
I request this be changed to state:"the Secretary hereby adopts... ", in
both sentences.**

**45-34-2, 2.3: Revise the last sentence to read: "...unless the Secretary,
after public comment is received, determines that the".**

45CSR33- "Acid rain provisions and permits":

45-33-1, 1-1:

Midway thru paragraph, Add after "amended" a date, for clarification.

**Last sentence: Revise to read as follows: " The Secretary hereby adopts
associated reference methods, performance specifications and other test
methods which are appended to these standards".**

**45CSR16 "Standards of performance for New
Stationary Sources Pursuant to 40CFR Part 60:**

45-16-1, 1-1:

**Rewrite to say: "Secretary hereby adopts" to agree with 45-16-4, 4.1.
This will remove the word "intent".**

45CSR30 "Requirements for operating permits":

**45-30-2, 2.6.j : Take out the last part of the sentence after: "... Clean
Air Act"**

2.26.b.8. Remove "Municipal Incinerators", "solid waste incinerators", Medical waste incinerators and ban Incineration of any waste material. When you MIX AND BURN garbage, you create new deadly chemicals like "DIOXIN", which is a deadly cancer causing material. Please ban and do not issue any permits for incineration of Garbage, medical waste or and other types of incineration. If you do not have a complete chemical analysis of what you are burning, you cannot tell what the output into our air will be.

45-30-3, Para: 3.2a

Delete: "may be deferred by the Secretary", after the Clean Air Act, and delete the last sentence as no longer needed.

45-30-4, 4.3.g

Delete this complete paragraph and delete any other reference to "EMISSION TRADING"

Emission trading, in all of the scenarios existing to date, is only allowing those willing and able to meet the requirements to make money by polluting their neighbors worse than themselves and is discriminatory and in my opinion a tracking and enforcement nightmare. Please do not allow EMISSION TRADING.

5.1.a.3. Page 15;

Add to end of paragraph: "... and will not allow more emission than the standard"

5.1.d.1, 5.1.d.2, 5.1.d.3.

Revise to delete any pollution allowances, however and whenever obtained. There cannot be any allowances without discrimination and we will all suffer from dirtier air should this be allowed

5.1.h. and 5.1.j., 5.8.b, 5.8.d, 6.5.a.1.B,

Rewrite to delete any and all methods of EMISSION TRADING, (see comments on 4.3.g.

45CSR25 “To prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or disposal Facilities”

Paragraph 4.1.3.

DO NOT ALLOW HAZARDOUS|WASTE INCINERATORS. (see comments above).

4.14 e.3

Change the word :”brief” to “complete”.

Paragraph 4.1.5.

Pathological Waste Incinerators.???

I take strong exception to allowing this type of incineration as what is going to be incinerated, or how much is allowed or just what is this. DO NOT ALLOW.

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.

45-13-6, Page 11:

6.1. Revise the end of the paragraph after “or other tests” to read as follows:

“... the Secretary specifies shall be conducted to determine compliance”.

6.2: Revise the first part of this Paragraph to read as follows:

“For Cause, the Secretary shall request...”.

45-13-11, Page 14.

11,1.

Mid paragraph, Revise to read as follows:

“...and other temporary purposes for periods of time not to exceed 90 days without applying for a construction permit...”.

45-13-15, Page 16;

15.1, 15.1.a, 15.1.b, 15.1.c, 15.1.d, 15.2, 15.3.:

Revise these paragraphs so that ANY Hazardous Air Pollutant is: Recognized, acknowledged, and that they shall be limited to controls that will protect Public Health for those who handle, ship, move, touch or breath the hazardous pollutant.

Revise last sentence in 15.3. to read as follows:

“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 is subject to all limitations and controls on hazardous air pollutants that is required to protect the health and safety of those coming in contact with the air pollutant. This section is applicable to all 112(n) source or sources. The secretary will provide the requirements upon receipt of an application that fully identifies the hazardous air pollutant.

45-13B

Item 12????

Describe “Mobile Sources”.???

Item 25:

Delete “incinerators” Do not allow incineration as a method of getting rid of this waste!!!.

45CSR26 “Nox Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units”.

2.46. “NOx Budget trading Program”

I take full exception to this program ; “... as a means of mitigating interstate transport of ozone and nitrogen oxides, an ozone precursor”.

This program will allow polluters to keep right on polluting in excess of what the codes and regulations and is a smoke screen that allows such pollution to continue which plagues the health, safety and welfare of the U.S.A.citizens.

I strongly oppose this trading program becoming any part of W.Va. rules and regulations, and ask that it be deleted from our regulations.

Page 5

It is a regulatory nightmare, fraught with possibility of fraud, illegal trades, etc.

2.54, page 7:

I question the listed "33%" of a units maximum design heat input. Efficiency must be a part of this calculation???.

2.56, Page 7:

Do not allow the MOVEMENT of any allowances, allocations, transfers or deductions. If a UNIT produces it, that unit must be reworked, re-manufactured, repaired, upgraded or whatever is necessary to come into compliance or be shut down, PERIOD!!!. No exceptions allowed.

2.63, Page 7:

Why only 48 States?????. Who is excluded and why???.

4.1.a., and 4.1.b, page 9:

Delete the following from the last sentence of both paragraphs:

"and produced electricity for sale under a firm contract to the electric grid".

45-26-55, Page 32:

Delete NOX allowance Banking and do not allow this as a practice or as part of the regulations. This also allows greed, fraud, regulatory nightmare and limited accountability.

45-26-57:

57.1. Delete and do NOT allow: "Allowance transfers".

57.2 Delete and do NOT allow: "allowance transfers".

60.1, 60.1.a., 60.1.b., 60.1.c. and complete section 45-26-61 on pages 33 and 34 must be deleted and allowance transfers stopped. They are discriminatory and must not be allowed.

45-26-71.

Paragraphs 71.1. and 71.2.

These paragraphs do not give the reasons or requirements that will allow one to know if the units are or are not subject to an: "acid rain limitation". More description of the requirements needed.

74.4:

74.4.b.2.A. Page 41:

Delete any allowance for any owner/operator to apply for “early reduction credits”.

74.4.d.

Revise the first part of this paragraph to read as follows:

“ The NOx authorized account representative shall submit to the Administrator and the Secretary compliance certification...”.

45CSR1 – “NOx Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides”

General Comment

NOx and OZONE have been a problem for years and it seems that EPA is trying to do something about this in this rule. It is very confusing and wordy and has a myriad of requirements, but, I do not see how this will in any way REDUCE either NOx or ozone .

The implementation of this program seems too far down the road before any reporting with any certainty that can be measured and I see NO accountability prior to then.

This recommended program allows :

trading of credits, banking of credits, transfer of credits, ,allocation of credits, set-asides of credits, exemptions for meeting requirements, early reduction of credits, deadlines for transfer of credits, compliance accounts for credits, overdraft accounts for credits and general accounts for credits and different requirements for the ozone season.

Talk about a nightmare for regulators to administer. If this program was designed to make more work for the already overworked regulators, I think it will be successful, However, I cannot see any thing this program offers that is going to reduce pollution of our Air.


There are some good guidelines for required reporting and with the full responsibility falling upon, not the owners or operators, but, squarely on the NOx account representative, Who will take the job, Who would want the job. How are you ever going to make this work????

Therefore, I recommend that DEP, delete all of the trading , banking, set-asides, transfers, deadlines, compliance accounts, overdraft accounts and general accounts for credits and therefore, completely scrap this program and rewrite it with enforcement of the requirements as #1 and make clear what the requirements are.

Also, start enforcing immediately the requirements that are already in the rules.

I see no reason for waiting 2-3 more years to start having better air for us West Virginians to breathe and I see no benefit to having new rules that allow others to trade on credits that can only make the problem worse.

Thanks for the opportunity to comment.


Fred Sampson
HC-68, Box 25
Ivydale, WV 25113
304-286-2204
E-mail: gsd01785@mail.wvnet.edu



July 15, 2002

Stephanie Timmermeyer, Director
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue, SE
Charleston, WV 25304

Re: Comments of the Independent Oil and Gas Association of West Virginia
on proposed revisions to 45 CSR 13

Dear Director Timmermeyer:

The Independent Oil & Gas Association ("IOGA") is pleased to provide comments on the proposed revisions to 45 CSR 13, titled "Permits for Construction, Modification, Relocation and Operations of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, and Procedures for Evaluation." ("Proposed Rule"). IOGA, formed in 1959, is West Virginia's largest oil and gas trade association with more than 350 corporate members. IOGA's purpose is to promote and protect the oil and natural gas producing industry through a variety of objectives.

IOGA applauds the Division of Air Quality's ("DAQ") efforts to streamline the minor source permitting program and offers the following specific comments.

Section 1: IOGA recommends that the DAQ include a provision that specifies which rule is federally effective for the purposes of compliance with the West Virginia State Implementation Plan and the federal Clean Air Act.

45 CSR 13 §§ 2.17.a and 2.24.b: IOGA supports the DAQ's revision to the permitting threshold to six pounds per hour and ten tons per year, or more than 144 pounds per day. This change to the threshold for minor source permitting is a positive revision to the air permit program. By allowing very small sources to be introduced without the delays attendant to the permitting process, West Virginia's businesses (and primarily small businesses) will have the flexibility to establish new operations or make minor changes to existing operations in a timely manner. In addition, this change allows the agency's resources to be focused on sources of significant emissions rather than the multitude of very small sources that can consume enormous amounts of agency staff time.

45 CSR 13 § 2.17.f.2 The rule provides that routine maintenance, repair and replacement shall not constitute a modification of a stationary source. However, the rule does not specifically define what types of replacement qualifies under this provision. IOGA recommends defining routine replacement as replacement of an engine or other source with any other similar kind of engine or source, as long as the replacement does not exceed the permitted potential to emit of engine or source being replaced. Such a provision would build flexibility into the rule while still maintaining the performance standards of the existing permit.

45 CSR 13 §§ 2.19.a The rule allows for the potential to emit for natural gas compressors to be determined by taking into consideration the reductions achieved by the catalytic converter. However, to be entitled to establish the PTE in such a manner, the rule requires the source to replace the catalyst every 45,000 hours of operation or every ten years. This replacement requirement is far too stringent and results in the premature replacement of catalyst, which is wasteful and costly. IOGA recommends that the catalyst replacement provision be based on the manufacturer's recommendations or specifications rather than an arbitrary time.

45 CSR 13 § 4.1.b: The rule requires the DAQ to take final action on an application for a Class I administrative update within 60 days of receipt of a completed application and prescribes no time limit for the DAQ's approval of an application for a Class II administrative update. These timelines for the approval are excessively long given the nature and purpose of administrative updates. IOGA requests that the timeline for approval of an application of a Class I administrative update be revised to 30 days and the timeline for approval of an application of a Class II administrative update be limited to 45 days.

45 CSR 13 §§ 5.7, 5.12, and 8: IOGA generally supports the two-tiered general permit approach in concept, but requests that the DAQ clearly define the type of Class I and Class II sources that are eligible for general permits. The Proposed Rule is unclear as to what sources will qualify as a Class I source and whether there is a presumption that only temporary and intermittently operated sources qualify as a Class I status. IOGA opposes such a presumption. By way of example, IOGA requests that the DAQ identify whether the existing general permits will be either Class I or Class II general permits.

IOGA recommends that the DAQ revise the permitting timelines for Class I and Class II general permits. A general permit is a simplified permitting mechanism for categories of sources that have similar operations and emissions. As such, obtaining coverage for a source subject to coverage under a general permit should be simpler and quicker than obtaining an individual permit. Moreover, general permits should play a vital role in economic development projects due to the time sensitivity of these projects. However, the Proposed Rule enlarges the time required to obtain coverage under a general permit. For instance, the 45-day timeline for approval of a registration for a Class I general permit is unnecessarily long given the fact that no public notice is required. IOGA requests that the DAQ revise the timeline for Class I general permits to 21 days.

Similarly, the 90-day timeline for approval of a registration for a Class II general permit is unnecessarily long given the fact that there is only a 30-day public comment period. IOGA requests that the DAQ revise the timeline for Class II general permits to 45 days.

With respect to the permitting timelines for Class I and II general permits, IOGA requests that the permit approval become automatic upon the expiration of the specified time, unless extended by the DAQ. There is no point of establishing timelines in the rule if the DAQ fails to approve or deny a registration within the prescribed time.

The public notice requirements for Class I and Class II general permits are also unclear. It appears that neither the applicant nor the DAQ is required to notify the public upon the applicant's intent to file a registration for a Class I general permit or upon the DAQ's intent to approve a registration under a Class I general permit. If this is the case, IOGA requests that the DAQ include language in Section 8.1 expressing that no public notice is required for registration under a Class I general permit.

IOGA also requests the DAQ to clarify whether the applicant for coverage under a Class II general permit must place the Class I legal advertisement in advance of filing the completed registration with the DAQ, as is currently required as a condition under the existing general permits. IOGA opposes such a requirement. However, if the DAQ intends to require such a notification of intent to file a registration, IOGA recommends that the requirement be expressed in the rule. Additionally, IOGA requests that DAQ clarify whether pursuant to Section 8.4 the DAQ must provide the public 30 days notice prior to the issuance of a Class II general permit. IOGA recommends that no such notice be required given the fact there is sufficient opportunity for the public to comment on the applicant's request for coverage under the general permit. First, pursuant to Section 8.9, the DAQ must provide the public with 30 days notice of any proposed new or revised general permit. Additionally, pursuant to Section 8.3 the applicant must place a Class I legal advertisement in a newspaper of general circulation in the area where the source will be located and provide the public with 30 days notice to comment on the applicant's request for coverage under the general permit.

Comment to 45 CSR 13 § 11.2.a. IOGA request that the DAQ reinstate the time required to approve or deny a request for a temporary construction or modification permit. Such a provision is necessary to eliminate uncertainty in the permitting process.

Comment to 45 CSR 13 § 12.1. IOGA supports the DAQ's revisions of the fees for general permits. However, IOGA questions the validity of subjecting Class II general permits to the additional fee provision of 45 C.S.R. 22 § 3.4.b. This section of the fee program rule relates to fees for sources subject to regulation under the rules governing PSD, nonattainment, NSPS, and toxic air pollutants, which are generally ineligible for a general permit.

IOGA appreciates the DAQ's efforts in revising 45 C.S.R. 13. Thank you for the opportunity to comment on the Proposed Rule.

Sincerely,

Handwritten signature of Charlie Burd in cursive script, followed by a vertical line and the initials 'skm'.

Charlie Burd
Executive Director

cc: Jeffrey R. Stevens
M. Ann Bradley, Esq.

Doc No. 215577

Comments on proposed changes to 45CSR13

A few years ago, I was one of many participants in a stakeholder process to rewrite, update and clarify regulations governing air quality. It was Reg 13 that caused the most grief and took the most time to review as it governed the process of permitting, not the comparatively technical issues addressed in many other regulations.

I am pleased to see that this year's amendments, drafted without any discernible public input leave intact many of the changes made during the stakeholder process. However I do have several concerns which I intend to share with you.

Section 2.17a references emissions increases and changes the standard to "or more than 144 pounds per day" which works out to 52,560 pounds per year or 26 tons, which is a substantial increase over the previous limit of 10 tons per year. There is no justification for this increase and it should be deleted. That number should also be deleted in sec. 2.24b.

I am unsure why sect 2.26 is deleted, which defines toxic air pollutant and think it should be retained.

Sect. 5.7 which shortens the time frame for issuing permits may or may not be acceptable to the Environmental Council as we are not convinced that the Office of Air Quality has the resources to implement it properly without moving too quickly on some permits.

The language regarding general permits seems to offer too much discretion to the Secretary and there is no confidence that the general permit process will protect public health or our environment.

This is Sect 5.12a. Remember regulations should be written so that no matter who is the Secretary, there will be consistency in the agency's standards and ability to protect the public. They should not be written with the current incumbent in mind.

Finally, we believe that all permit holders should pay a fee as part of the permit application. A fee of \$250 may be too high for a marginal company, but if no money is available, perhaps the company is too undercapitalized to maintain itself and its pollution control efforts.

Conni Gratop Lewis for the West Virginia Environmental Council

COMMENTS OF THE WEST VIRGINIA
OIL AND NATURAL GAS ASSOCIATION ON
PROPOSED AMENDMENTS TO 45 CSR 13

The West Virginia Oil and Natural Gas Association (WVONGA) is comprised of a number of oil and natural gas companies engaged in the processing, transmission, production and utilization of these products from the wellhead to gas-fired turbines, engines and boilers. Accordingly, WVONGA is greatly interested in the provisions of 45 CSR 13 since the vast majority of our sources are in the minor source category which are governed by Regulation 13.

We commend the DAQ's use of general permits for many natural gas compressor stations. We believe this promotes uniformity and equity in permit conditions as well as streamlining the permit-issuance process. We urge the continued and expanded use of such permits.

Our specific comments on the proposed changes to Regulation 13, and suggestions for related additional changes, follow.

1. Definition of Modification - Section 2.17

WVONGA strongly supports the proposed change in subsection 2.17. (and 2.24.b.) to adjust the permit-triggering threshold to more than 6#/hr. AND 10 TPY. The current definition is causing too many small sources, including many oil and gas sources, to have to obtain permits for increases which are in fact just a little over 2#/hr.

We note, however, that section 2.17 continues to lack any definition of how an “increase” is to be calculated, leaving regulated entities to guess. Since this rule deals with minor sources, we strongly urge the DAQ to utilize a current actual or current allowable to anticipated future actual test to set a baseline from which “increases” are calculated. This would be consistent with the approach taken by EPA in its announced New Source Review reforms for major sources. Alternatively, a current potential to emit to future potential to emit would also apply a clear test to determine whether an “increase” will occur which requires a permit to modify. EPA is clearly moving away from the old “current actuals to future potential to emit” test, even for major sources. The rule needs to be clear that an increase in actual emissions that does not exceed already allowable emissions does not require a permit modification or permit for sources governed by either a permit or a limit in a rule such as in Regulation 10, which apply regardless of whether a source has a permit. The current rule also does not address how contemporaneous decreases are to be factored into the calculation so as to allow “netting” for sources which are obtaining permits. In such cases, those decreases would be enforceable and should be allowed, just as they are for major sources under Regulations 14 and 19.

We also note that subsection 2.17.b. regarding hazardous air pollutants currently applies on “an aggregated basis,” but also does not establish a baseline nor describe how the “aggregation” is to be calculated. To clarify this, we suggest that the subsection be modified to add the words “the potential to emit” after the words “year of” and by adding the words “all hazardous air pollutants involved in the subject increase, not per pollutant” after the word “basis.” This subsection continues to be far more stringent than the counterpart federal standards rules which only apply to major sources of HAPS at levels of 10 tons/year for any single HAP or

25 tons/year for aggregated HAPS. We also note that the Clean Air Act does not require aggregation for oil and gas sources,¹ and governs through the establishment of source-type standards, not by individual emissions limits as does Regulation 13, which results in extremely small limits on extremely small sources. We urge the DAQ to reconsider this approach in subsection 2.17.b and also in section 15. While limits are being set in permits at the source's PTE, these limits then become enforceable, applicable requirements for both Regulation 13 and 30, subject to compliance certification. The limits are typically so small that they can only be calculated not measured. This then becomes the baseline from which a permit modification requirement would be triggered under subsection 2.17.b.

At a minimum, we believe that section 15 should be tied to subsection 2.24.c. such that no limits, even PTE's, would be put in permits for sources with PTE's smaller than the thresholds in 2.24.c. This has not been the DAQ's practice, though we believe there is and should be a clear nexus between these sections. If deemed necessary, Regulation 13 permits for such below-threshold sources should simply restrict HAPS to less than the thresholds in

¹ §112(n)(4)(A)

“Notwithstanding the provisions of subsection (a) of this section [Definitions], emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under...this section, except...in any...metropolitan...area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.”

subsection 2.24.c., but even this approach goes far beyond the Clean Air Act requirements and control approach.

2. Routine Maintenance, Repair and Replacement-Subsection 2.17.f.2.

In order to eliminate ongoing misunderstandings about engine replacements at natural gas compressor stations, we urge that the following words be added to this subsection after the closing parentheses:

provided, further, that in the case of the replacement of a natural gas compressor engine, such replacement shall be considered routine so long as the replacement engine does not exceed the horsepower of the unit it replaces and so long as the potential to emit nitrogen oxides and carbon monoxides is not increased.

Alternatively, we suggest that such replacement be considered “routine” so long as the PTE of the replacement unit does not exceed the PTE of the replaced unit and the new unit is not a major source nor subject to any New Source Performance Standard.

This change will provide some much needed clarity and flexibility at compressor stations which need to be able to change engines promptly. These restrictions will assure that such replacements are environmentally neutral without complicating the process. If deemed necessary, a notice provision could be added to require the operator to apprise the DAQ in writing of the change-out. However, since failure to qualify for the exemption would be a direct violation of the permit requirement of this rule, we don't think notice is truly necessary. A source owner or operator would have to be able to document compliance with this provision/restriction to avoid a violation of the rule.

3. Definition of Potential to Emit - Section 2.19

Subsection 2.19.a. reflects a proposed minor amendment. In addition, WVONGA requests that the last sentence of that subsection be replaced with the following language:

The source shall clean, regenerate or replace the catalyst in accordance with the specifications of the element's manufacturer. The effectiveness of the catalyst shall also be verified by the source on an ongoing basis pursuant to good operating practices documented in records which must be kept by the source reflecting periodic routine checks of catalyst element operations.

The current definition contains an absolute requirement for catalyst replacement every 45,000 hours of operation or every 10 years, whichever is earlier. WVONGA knows of no relationship between catalyst effectiveness and these time periods. Accordingly, we urge this provision to be changed to tie it to the manufacturer's recommendations for maintenance and to obligate the source to employ ongoing good operating practices for catalyst maintenance.

4. General Permit Updates

We note that subsection 4.1.b. has a 60-day limit within which the Secretary is to act upon Class I administrative updates. However, there is no time limit on processing a Class II update. This is significant because a source cannot implement the changes addressed in a Class II update until it is fully processed, including notice. For this reason, we urge that subsection 4.1.b. be revised to process simple Class I updates within 30 days from receipt of a complete application, and Class II's within 60 days. Since these types of changes do not even constitute "modifications," this process should be swift and simple.

Section 4.1 is proposed to be revised to require that no administrative update be inconsistent with the terms and conditions of the applicable permit. Literally, all such changes would be so. Perhaps the intent here is to bar the use of administrative updates to alter any of the emissions limits or performance standards in a general permit? A bit more specificity would be helpful here.

Subsection 4.2.a.4. is also directly linked to these issues. It only allows the use of a Class I update to incorporate more stringent requirements from an applicable rule promulgated after the permit was issued, etc. This should really work both ways. If there was a good reason to change the rule (after notice and comment), then why should that not form the basis for a Class I update? This problem is well-illustrated in the compressor station General Permit, which contains the old Regulation 13 provisions, not those of the current version, and will soon be at odds with these new provisions if adopted. So, either General Permits must be regularly updated or this provision should allow the terms of any effective rules to prevail where inconsistent with any term or condition in a General Permit.

Subsection 4.2.b. deals with Class II administrative updates which, through the proposed amendment to section 4.3., would apply to a "general permit registration." Subsection 4.2.b.1. is so broad that it appears to cover everything short of a "modification" that is not a Class I update. If this section is interpreted to apply to superceding rule changes, then it would cost each source \$300, an indeterminate waiting period, and public Notice Level A under section 8.3 (Class I legal ad and 30- day comment period). This seems like overkill for sources governed by general permits for something so simple as, for example, changing a boilerplate condition to conform to

a new effective rule that is deemed “less stringent” or to renumber emissions points differently than in the original General Permit registration, but which does not change anything else.

Since general permits by their nature all have the same terms and conditions, it doesn't seem appropriate for any one source to seek amendments to it, so we surmise that the DAQ is attempting to create a mechanism to allow general permit sources to keep their “registration” details “fresh” if they so desire, since all administrative updates are by definition voluntary. If that is the case, then perhaps it would be more straightforward to create a new subsection in section 4 dealing only with general permits that allows a source to “update” any change in registration information, without all the complexity that goes with amendments to source-specific permits, in view of the fact that such changes are not modifications anyway.

5. Class I and Class II General Permits

Subsection 5.7 contains the first references to a “Class II general permit.” It would establish a 90-day period for action by the Secretary on a Class II general permit and 45 days for a Class I permit. Both of these time periods apply to the application by a source to register for coverage under a given Class I or Class II general permit. Since the general permits themselves would have already undergone full notice and comment, and are not subject to individualized terms and conditions, we do not understand why the DAQ contemplates a need to take twice as long for the approval of a registration for coverage for a Class II general permit. Whether such a permit is Class I or Class II (further comments to follow on this subject), WVONGA believes that review of a completed registration for coverage should be achievable in either case within 45 days of receipt of a complete registration application.

Section 5.12 is the authorization rule for the development of Class I and Class II general permits. Subsection 5.12.a., seems to indicate that general permits will be classified as either Class I or Class II at the time they are issued and go through public comment. However, we believe that this subsection should be amended slightly to make this clear, so that there is no implication that the designation will be made source-by-source. Because the proposed language uses a singular reference for "source", it leaves an implication that the Secretary might make these determinations on a source-by-source basis. Accordingly, we suggest the addition of the following sentence at the end of this subsection:

The designation of Class I or Class II for a general permit shall be made at the time the permit goes through public comment and adoption for the source category governed by the general permit.

Subsection 5.12.b., generally would establish that Class I and II general permits would be subject to the public notice requirements and fees specified under sections 8 and 12 of Regulation 13. WVONGA's concern is that in examining sections 8 and 12, the proposed revisions make it clear that Class II general permit applications for coverage under such permits is proposed to be subject to full notice and comment, just as permit applications would be for new or modified sources. Since the terms and conditions of a general permit are, by definition, the same for all sources subject to a general permit, we cannot understand the purpose or necessity for such individual notice and comment for an individual source simply applying to register for coverage under an already adopted general permit. The terms and conditions of the general permit itself should satisfy any concerns with respect to the operation of any qualifying source to operate under those terms. With the newly proposed provisions regarding full notice for Class II general permits, there is really no advantage left to using such a general permit or

registering for coverage under one as opposed to obtaining an individual permit. The only possible advantage is the proposed somewhat shorter time period within which registration might be approved as opposed to the approval time for a separate permit.

6. Public Notice Procedures

WVONGA is generally supportive of the proposed change to return to a 30-day notice of filing and 30-day notice of proposed issuance of permits. In practice, the former 60-day period for processing of permits has become a 75-day period. Accordingly, we believe that the return to the two periods of 30-day notice is more clear cut and may serve to shorten the period of time necessary for permit application processing, if there is diligent "gap management" between filing and draft permit notice for comment.

We are glad to see the proposed revisions to subsection 8.5.a regarding the placement of a sign at the entrance of a source or proposed site regarding the application for an air quality permit. We believe that this revision could be further improved by altering the new beginning language to read as follows:

...Secretary's placement of a Class I legal advertisement of intent to issue, the applicant shall post....."

This more specific language will eliminate the current problem which has been experienced by some sources of having been required by someone at the DAQ to post the sign immediately after the application was filed, rather than waiting for the notice of intended issuance of a permit. To avoid this potential outcome, we believe that the clarifying language should specify that the sign must go up near the time of the Secretary's ad advising the public of

the agency's intent to issue a permit. The public will already have been apprized that a permit application is pending through the issuance of the first Class I legal advertisement under section 8.3. In order to focus the public's attention on the fact that a draft permit is now pending, the time for posting a sign should be sometime right prior to or during that public comment period.

WVONGA also supports the elimination of current subsection 8.7 requiring the filing of copies of the Class I legal advertisements in the county courthouse in the county where the sources will be located. We believe that such filings no longer serve any useful or practical purpose given the direct notices published in newspapers, the publications of the DEP, and availability of permit notices and information on the DAQ's website which is available readily to the public either directly or through public libraries. If the DAQ would like to underscore this availability of such public information, perhaps the Class I legal advertisements placed by the Secretary pursuant to section 8.5 should contain within them the agency's website address for further information.

7. Permit Application Fees

WVONGA supports the proposed revisions reflected in subsection 12.1 regarding application fees for permittees registering for coverage under general permits. We believe that this "price break" is justified since processing a request for registration under a general permit is a much simpler and less time-consuming process than an application for a separate permit. However, we do not understand why the provisions of subdivision 3.4.b of Regulation 22 relating to additional fees would apply for sources seeking coverage under Class II general permits. Presumably, sources subject to new source performance standards or PSD are not

eligible for general permits to begin with. We also ask that the DAQ examine the provisions of Regulation 22 regarding the annual fees for certificates to operate as they may apply to this subsection 12.1. Currently, although Regulation 22 would apply an annual fee only to compressor engines with greater than a 1000 horsepower, other smaller sources and engines appear to be subject to an annual fee of \$200, whether or not the source holds a permit. If this is not the intention of the DAQ in applying Regulation 22, then we suggest that subsection 12.1 of Regulation 13 be further amended to make it clear that the holders of general permits are not subject to any fees for annual certificates to operate under Regulation 22.

8. De Minimis Sources

WVONGA supports the proposed changes to the listing of De Minimis Sources as reflected in new paragraphs 39 and 40. We believe that the proposed language appropriately and clearly designates which maintenance and upkeep activities will be considered De Minimis Sources not required to be subject to the permit program.

WVONGA appreciates the opportunity to bring these comments and suggestions to the attention of the Division of Air Quality. We are glad to see the DAQ undertaking a review and revision of Regulation 13 in the light of experience under the revisions to the rule which were effective June 1, 2000. Two years of experience under the revised provisions has given those subject to the rules a good sense of where both strengths and weaknesses of the provisions lie. The DAQ's proposed revisions are certainly attempting to address those concerns. The comments of WVONGA address not only the directly proposed changes by the DAQ, but also those sections which are an integral part of and directly related to the provisions under

Page 12

consideration for amendment. Because of the interrelationship of regulatory provisions, they are very like dominoes, which stand or fall together. We hope that the DAQ will take our comments into account in this broader sense based on the experience of our members with the rules over the past two years.

Respectfully submitted July 15, 2002 by:

Reed Robinson
for the
West Virginia Oil and Natural Gas Association
P.O. Box 3231
Charleston, West Virginia 25332
(304) 343-1609

cc: WVONGA
EH&S Committee
Kim Brown Poland, Esquire



State of West Virginia
DEPARTMENT OF AGRICULTURE
Gus R. Douglass, Commissioner

Janet L. Fisher
Deputy Commissioner

Steve Hannah
Deputy Commissioner

July 15, 2002

Ms. Stephanie Timmermeyer
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue
Charleston, WV 25304-2943

Dear Ms. Timmermeyer:

After reviewing the proposed Air Quality Rule 45-13, "*Permits for Construction, Modification, Relocation & Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits & Procedures for Evaluation*," I wish to offer the following comments.

The establishment of a Class I permit for on-farm incinerators as per **Section §5.12** of the proposed rule will be beneficial to West Virginia's agricultural community. The imperative need for rapid on-farm disposal mechanisms for poultry mortality became clear during the recent outbreak of avian influenza in the Eastern Panhandle. It is the opinion of the West Virginia Department of Agriculture that creation of a Class I general permit with less stringent monitoring regulations and reduced operating fees will aid West Virginia farmers in adopting this necessary technology.

We recommend the following addition to **Section §5.12.a**: "**Stationary sources used as a component of an agricultural operation shall be covered by a Class I general permit.**" It is important that on-farm incinerators be guaranteed the ability to operate under a Class I general permit.

The annual cost of obtaining an operating certificate for an on-farm incinerator as per 45CSR22 is an impediment to adoption of this mechanism of mortality disposal by West Virginia farmers. We recommend inserting the following after Section §5.12.a: **Section §5.12.b: Stationary sources used as a component of an agricultural operation shall be exempt from fees prescribed by 45CSR22 §4.3. The annual fee for a certificate to operate for stationary sources used as a component of an agricultural operation shall be \$100.00.**"

The above changes will make the proposed regulation more acceptable to West Virginia's agricultural community. I hope we can continue working together to ensure that all necessary issues are addressed and West Virginia farmers can begin taking advantage of this mechanism of mortality disposal in the near future. I thank you for the opportunity to be involved in the process of developing rules that can benefit West Virginia farmers. Should you have questions or desire additional information, please do not hesitate to contact me at 558-3200.

Best Regards,

A handwritten signature in cursive script, appearing to read "Steve Hannah".

Steve Hannah
Deputy Commissioner

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>

217 WEST BURKE STREET
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-263-8800

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-456-1751

150 CLAY STREET
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-284-4100

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

1099 18TH STREET
DENVER, COLORADO 80202
TELEPHONE 303-390-0003

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40588
TELEPHONE 659-255-9500

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

MEMBER OF LEX MUNDO,
THE WORLD'S LEADING ASSOCIATION
OF INDEPENDENT LAW FIRMS.

July 15, 2002

kbeckett@jacksonkelly.com

(304) 340-1019

Stephanie R. Timmermeyer, Esq.
Director, Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: 2002 Proposed Regulatory Changes.

Dear Director Timmermeyer:

The following comments are provided on behalf of the West Virginia Chamber of Commerce to the draft rulemaking package the Division of Air Quality has recently circulated. One general comment that would enhance the commenting process would be for the agency to provide a preamble or rationale document explaining the agency's proposals. This would especially be useful in light of the agency's recent position that no further communication may be had with the public once a proposal has been published. Having read the changes, it is very natural to want to understand the issue the agency is attempting to address.

1. 45 CSR 1 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
2. 45 CSR 13 –

Modification Thresholds - It is proposed that the term "modification" be revised to require a permit for modifications that result in emissions of six pounds per hour "and" 10 tons per year or more and also for emissions that results in "more than 144 pounds per calendar day." Although the Chamber supports the inclusion of the "and" in the

definition, we question to need for the addition of the 144 pounds per calendar day threshold. The DAQ has not provided any rationale for this limitation in relation to the regulated pollutants. It would be well for the agency to provide additional discussion concerning this proposed change in order to educate the commentors as to the purpose served by this revision.

General Permits – In general, the Chamber supports the concept of creating a program for enhancing the usefulness of the state general permit program. It appears that the DAQ is attempting to modify the general permit program with a view toward that goal. The Chamber supports the creation of a modified fee structure for general permits. It would be well for the agency to provide additional discussion concerning these proposed changes in order to educate the commentors as to the intended result of these modifications.

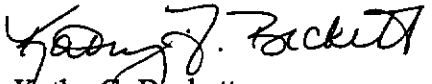
Public Notice Requirements – The Chamber is appreciative of the modifications to Section 8.4.a and 8.5.a, in that they represent changes designed to address the need to clarify the existing regulation. The Chamber supports the DAQ's proposed removal of Section 8.7 as unnecessary.

Temporary Permits – The DAQ has proposed removal of the timeframe within which the agency would review the request for a temporary permit. Understanding the very nature of such permits, it appears that all would be well served by maintaining a limitation on review time. Perhaps had the agency provided a rationale for this change we would better understand the agency's concerns with the last sentence of Section 11.2.a. The Chamber does not support this modification.

3. 45 CSR 16 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
4. 45 CSR 25 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
5. 45 CSR 26 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
6. 45 CSR 30 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.
7. 45 CSR 33 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

8. 45 CSR 34 – The Chamber supports the revisions made to this rule in that they are consistent with EPA guidance.

Very truly yours,


Kathy G. Beckett



WEST VIRGINIA MANUFACTURERS ASSOCIATION

2001 Quarrier Street, Charleston, WV 25311
Telephone: (304) 342-2123
FAX: (304) 342-4552
wvma@wvma.com

July 15, 2002

Stephanie Timmermeyer, Director
Division of Air Quality
Department of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Re: Proposed Amendments to Title 45, Series 13

Dear Director Timmermeyer:

The West Virginia Manufacturers Association (WVMA) is a broad-based trade association with members from wood products manufacturers to chemicals, metals, energy and printing. As such, the WVMA members form the core of the West Virginia industrial economy. Regulation 13 is the most frequently applicable rule of concern to our membership. While there are many major sources in our ranks, most construction and modifications are of a minor nature which is addressed by Regulation 13. Accordingly, we have a keen interest in the proposed revisions to this regulation, which was last amended effective June 1, 2000.

A. Modifications

The WVMA supports the proposed modification to section 2.17.a to change the threshold for what constitutes a "modification" requiring a permit to six pounds per hour and 10 tons

Board of Directors

Allegheny Energy
Ashland Chemical, Inc.
Aventis CropScience
BASF Corporation
Bowles Rice McDavid Graff & Love
Capitol Cement Corporation

Cytec Industries, Inc.
Dean Company (The)
The Dow Chemical Company
Downard Hydraulics, Inc.
DuPont
Eagle Manufacturing Co.

Elkem Metals Company
Flexsys
FMC Corporation
Georgia-Pacific Corporation
GE Plastics
Kanawha Manufacturing Co.

Kingsford Manufacturing Co.
Koppers Industries, Inc.
Marble King, Inc.
Mylan Pharmaceuticals, Inc.
Pechiney Rolled Products, LLC
Phillips Machine Service, Inc.

Pilgrim's Pride Corporation
PPG Industries, Inc.
Special Metals Corporation
Toyota
W.M. Cramer Lumber Co.
Weirton Steel Corporation

Stephanie Timmermeyer, Director

July 15, 2002

Page 2

per year or more. We believe that experience over the last two years has shown that the 10 tons per year limit has swept more units into the permit program than is necessary given that a 10 ton per year or more threshold amounts to only slightly over two pounds per hour, which is a very small source, and a much smaller source than the DAQ has ever historically regulated.

Accordingly, we strongly support this change. However, we don't believe that the addition of the 144 pounds per calendar day threshold is justified for conventional, criteria pollutants because it is not needed for any short-term impact mitigation. We do not believe that there will be any negative localized impacts from short-term emissions at minor new sources (less than 10 tons per year) of a criteria air pollutant. Additionally, 45 CSR 7 directly imposes short-term emissions limits on total particulate matter and four mineral acids. Under the proposed 144 pounds per calendar day threshold, sources would have to carefully track their daily emissions to be able to demonstrate that they qualified and continue to qualify for this exemption, which poses both recordkeeping and enforcement risks and obligations for what are very small sources in any case.

For uniformity of approach, we do wonder why a similar conforming change has not also been proposed in subsection 2.17.b. for hazardous air pollutants. For the same reasons, we support changing the word "or" in this subsection to "and." A similar amendment should be made to subsection 2.24.c., as to the definition of "stationary source."

Stephanie Timmermeyer, Director
July 15, 2002
Page 3

As a related matter, we note that this section does not offer guidance to the potential permittee as to how an "increase" is to be calculated. What is the baseline for calculating an emissions increase for minor sources? We note that as for major modifications to major sources, EPA is currently proposing (under New Source Review reform proposals) to go to a current actuals to representative future actuals test for determining whether an increase has occurred which would require a major modification permit. We believe that a similar concept should be applied for minor sources, but also believe that using current allowables to future actuals or allowables, whichever is higher, is the more appropriate test for minor sources since many of them are governed directly by emissions limitations derived from rules and regulations. With that in mind, it makes no sense to require permits for increases which are still within allowable limits established for that type of source in either a permit or rule, so long as it remains a minor source.

B. General Permits

As a minor comment, some members found the term "general permit registration" to be somewhat awkward as a description for a source governed by a general permit. We understand that a source applies to be governed under the terms of an existing general permit by registering certain information with the DAQ for approval. Perhaps a distinction needs to be made in the proposed amendments to the rules between the act of filing a registration form with the DAQ

Stephanie Timmermeyer, Director

July 15, 2002

Page 4

with certain information in it, and the approval by the Director of a source to be governed by a particular general permit. This seems particularly necessary given that the terms of a general permit should not change even though an applicant might file updated information regarding its "registration" form to be governed under that permit. The rules could refer to the filing of "registration forms" and approval as a "general permit source."

We are unclear about the DAQ's intention in establishing Class I and Class II general permits. The proposed provisions for "using" a Class II general permit really are on parallel with an individual permit under Regulation 13. Does the DAQ intend by these new provisions to make general permits more available to sources which may hold other individual permits? Will the permit designation be made at the time the general permit is adopted or on a case-by-case basis depending on where the source is located, etc.? On first blush, it would seem to us to be the better course to keep the provisions on general permits simple so that they can be used more frequently for similar sources, and leave to the terms and conditions of the permit itself resolution of any concerns about the nature and volume of emissions from such sources, their expected basis of operation, or proximity to locations occupied by the public, without the need to establish different classes of permits. The general permit itself could contain tiered provisions to address varying site conditions of the type listed. With a simple approach, we do not see why it should take as much as 90 days to complete the review of an application for coverage under a general permit, even a Class II general permit as the DAQ might envision that class.

C. Pre-Construction Activities for Minor Sources

We note that there is no specific change proposed to section 5.1 regarding allowable pre-construction activities for sources prior to the issuance of a permit. However, we note that there is a continuing problem with the interpretation of subsection 5.1.h as to whether or not, after having been authorized under this subsection to order equipment and secure supplies with which an emissions unit will be constructed, the rule allows ordered equipment and supplies to be stored or stockpiled near the site of the future emissions unit, even though the rule does not expressly prohibit this. Accordingly, we hope that the DAQ might use this round of rule making to clarify the interpretation and application of subsection 5.1.h by inserting the following sentence at the end of that subsection: "Such equipment and supplies may be stored or stockpiled at the facility, but not on the intended emissions unit's final installation location, and no emissions unit may be erected or installed prior to permit issuance except for those limited activities expressly authorized in section 5.1."

D. Notice Provisions

As we read the proposed amendments to sections 8.3 and 8.4, it appears to us that there can be at least some overlap in the 30-day periods involved between the initial placing of a Class I legal advertisement by the applicant and the issuance of the Class I legal advertisement of the

Stephanie Timmermeyer, Director
July 15, 2002
Page 6

DAQ's intent to issue a permit. If this is the case, then we would not have an objection to the changes proposed so long as the intention is not to lengthen the period of time involved in the processing of a Regulation 13 permit. We do note, though, that the former actions excluded from pre-draft permit notice in this subsection were excluded after lengthy negotiations with the stakeholders' group in the year 2000, and that this scope expansion has the potential for again lengthening the process. However, we believe that the expansion of notice provisions in Section 8.4 should NOT be extended to Class II administrative updates or to so-called Class II General Permits since this defeats the purpose of speedy action on minor permit matters that do not themselves constitute permit modifications. Examples would include the incorporation of a new rule requirement in a permit that is not a modification or a Class II update to incorporate a Reg. 7 change that is also not a modification.

As to both the publishing of a commercial display advertisement and the posting of a sign at the entrance to a source or proposed site, we believe that the proposed language changes are trying to resolve the problem of timing, but might be made a bit more clear. Accordingly, we suggest that in both subsections 8.4.a and 8.5.a that the initial phrase "At any time prior to the Secretary's placement of a Class I legal advertisement or" be amended by adding the words "of intent to approve" and "of intent to issue," respectively, after the word "advertisement."

As to subsection 8.5.a, in addition to the changes being proposed above, we note that this subsection does not say when an applicant is allowed to remove the required sign. Accordingly,

Stephanie Timmermeyer, Director
July 15, 2002
Page 7

we request that language be added to subsection 8.5.a to read as follows and be added after the last sentence:

The applicant must post the sign for a period of at least one calendar week.

We also agree with the agency's proposed deletion of subsection 8.7 as the "courthouse" notice really serves no useful purpose. Instead, we would encourage the DAQ to post copies of such notices on its website for access by the public.

E. Class II Administrative Updates

In subsection 4.1.b, a minor amendment is proposed, but the DAQ is perpetuating language that states that the secretary may take final action on any Class II request within 60 days from receipt of a permit application therefor. This leaves the agency with no time limit on processing a Class II request. We believe that a time period should be instituted in this subsection and propose that a maximum 75-day period apply to updates for Class II requests since these are updates which do not constitute modifications and are, therefore, somewhat less complex to process.

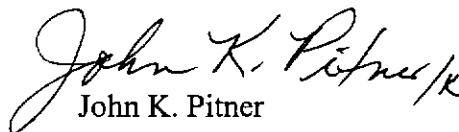
Stephanie Timmermeyer, Director
July 15, 2002
Page 8

F. De Minimis Sources

The WVMA agrees with the proposed changes in the listings for Table 45-13B De Minimis Sources. We believe that the proposed changes better describe the exempt minor activities.

The WVMA appreciates this opportunity to present its comments and concerns regarding the proposed amendments to Regulation 13. We believe that the changes proposed, and those suggested in these comments, reflect the needs and issues which have arisen in the last two years of experience under the last version of the rule which went into effect on June 1, 2000. Review and evolution of these core rules, such as Regulation 13, is highly desirable to improve and refine both their application and interpretation. We appreciate the agency's efforts to undertake this process.

Respectfully,


John K. Pitner

cc: Karen S. Price, President, WVMA

Stephanie Timmermeyer, Director
July 15, 2002
Page 9

Air Team Members

Kim Brown Poland, Esquire



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

RECEIVED
AIR QUALITY
JUL 12 2002

JUL 12 2002

Ms. Stephanie R. Timmermeyer, Director
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle, S.E.
Charleston, WV 25304

Dear Ms. Timmermeyer: *Stephanie*

The purpose of this letter is to respond to your June 11, 2002 request for the U.S. Environmental Protection Agency's (EPA) comments regarding proposed revisions to the following West Virginia air quality regulations: 45CSR1, 45CSR13, 45CSR16, 45CSR25, 45CSR26, 45CSR30, 45CSR33, and 45CSR34. Based on our review, we have no comments on the proposed changes to the aforementioned regulations. Once finalized, the proposed revisions must be formally submitted to EPA as a revision to the West Virginia State Implementation Plan. EPA would like to thank the State of West Virginia for the opportunity to comment on its proposed amendments.

If you should have any questions, please feel free to contact me, or Walter K. Wilkie, Deputy Chief, Air Quality Planning & Information Services Branch, at 215- 814-2150.

Sincerely,

Judith M. Katz, Director
Air Protection Division



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 June 12, 2002, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on July 15, 2002 to accept oral comments on the proposed rule, 45CSR13. Written comments were also accepted through 6:00 PM on Monday, July 15, 2002. Four people verbally commented at the public hearing concerning proposed rule 45CSR13. Eight commenters submitted written comments on proposed rule 45CSR13. DAQ addresses these comments below.

I. Commenter: Fred Sampson

COMMENT A. 45-13-6, Page 11

6.1. Commenter requests that the end of the paragraph after "or other tests" read, ". . . the Secretary specifies shall be conducted to determine compliance."

RESPONSE A. This comment is beyond the scope of DAQ's limited proposal which is designed to reduce the number of sources that must apply for a permit, as well as the time required to process permits without requiring any additional funding or staffing resources, while at the same time remaining protective of the environment. DAQ notes, however, the subject language provides general authority to require testing.

COMMENT B. 45-13-6, Page 11

6.2. Commenter requests that the first part of the paragraph read, "For cause, the Secretary shall request."

RESPONSE B. Please see response to I.A.

COMMENT C. 45-13-11, Page 14

11.1. Commenter requests that mid-paragraph be revised to read, ". . . and other temporary purposes for periods of time not to exceed 90 days without applying for a construction permit . . ."

RESPONSE C. As stated above, this issue is beyond the scope of the current rulemaking. However, DAQ notes that each Rule 13 temporary permit must be applied for

and issued prior to any construction or operation of the source, and the duration of a temporary permit may not exceed 18 months.

COMMENT D. 45-13-15, Page 16
15.1-15.3. Commenter requests that these paragraphs be revised so that any Hazardous Air Pollutant is recognized, acknowledged and that they shall be limited to controls that will protect public health for those who handle, ship, move, touch or breathe the hazardous pollutant.

RESPONSE D. Again, this particular comment is beyond the scope of this rulemaking. The DAQ wishes to point out, however, that the current rule generally protects public health by requiring limitations and controls which are contained in applicable state rules and federal regulations.

COMMENT E. 45-13-15, Page 16
15.3. Commenter requests that the last sentence be revised to read, "Any source or source category that has been the subject of an analysis pursuant to Section 112(n) of the Federal Clean Air Act is subject to all limitations and controls on Hazardous Air Pollutants that is required to protect the health and safety of those coming in contact with the air pollutant. This section is applicable to all 112(n) source or sources. The Secretary will provide the requirements upon receipt of an application that fully identifies the Hazardous Air Pollutant."

RESPONSE E. This comment is beyond the current scope of this rulemaking as stated above. However, the DAQ notes the language is based upon an express exemption existing in federal law, which must therefore be included in the State rule.

COMMENT F. 45-13B (Table)
#12. The commenter requests that the DAQ describe "mobiles sources."

RESPONSE F. Although outside the scope of the proposed rule, the exemption of "mobile sources" is consistent with the language in Rule13, section 1.1, Scope. The rule does not regulate nonroad vehicles, motor vehicles and other emission sources regulated under Subchapter II of the Federal Clean Air Act.

COMMENT G. 45-13B (Table)
#25. The commenter requests that the DAQ delete incinerators and not allow incineration as a method of getting rid of waste.

RESPONSE G. The commenter's concerns are general in nature and do not specifically address the proposed rule, although the proposed rule is one of the DAQ's

most important tools for the prevention and control of air pollutant emissions into the State's environment. It should be noted that the language at issue, in fact, excludes incinerators used to burn animals from the de minimis list, meaning such incinerators may be required to obtain a Rule 13 permit, resulting in more specific regulation of such sources.

II. Commenter: West Virginia Environmental Council

COMMENT A. 45-13-2.17.a.

The commenter is concerned about the emission increases and changes to the standard of "or more than 144 pounds per day" which works out to 52,560 pounds per year or 26 tons, which is a substantial increase over the previous limit of 10 tons per year. The commenter feels there is no justification for this increase and wants it deleted in 2.17.a., as well as 2.24.b.

RESPONSE A.

The additional permitting threshold limit of 144 pounds per day is meant to prevent the emission of a large amount of a criteria pollutant, such as VOC, over a short period of time without first being reviewed for compliance with any appropriate State rules or federal regulations and acquiring the appropriate permit. Such an emission could potentially violate a National Ambient Air Quality Standard (some of which are expressed in short-term limits) and be contradictory to the intent and purpose of Rule 13.

DAQ's limited rulemaking proposal is designed to reduce the number of sources that must apply for a permit, as well as the time required to process permits without requiring any additional funding or staffing resources, while at the same time remaining protective of the environment. The DAQ believes it is justified to change the threshold limits from "6 pph or 10 tons per year" "to 6 pph and 10 tpy," in order to eliminate the permit requirement for some small sources, however, the 144 pound per day threshold is a necessary backstop to prevent adverse impacts over the short-term. DAQ recognizes that both thresholds, the "6 pph and 10 tpy" and the "144 pounds per day" have the potential to allow some sources to emit up to 26 tons a year without obtaining a permit, but DAQ believes the 144 pounds per day threshold and the agency's authority to prevent "statutory air pollution" will serve as useful backstops in those relatively uncommon situations. Also see response V.A.

COMMENT B. 45-13-2.26.

The commenter does not understand why this section was deleted and feels it should be retained.

RESPONSE B.

The DAQ proposed deletion of the term "Toxic Air Pollutant" because many people confused it with the agency's list of toxic air pollutants under

45CR27, an entirely separate rule. The term was used in Rule 13 to refer to a list of pollutants in Table 45-13A, so the agency merely removed the term from the rule (see section 15.1) but retained the list of pollutants and the manner in which they were regulated (see sections 2.17.c and d and section 2.24.d).

COMMENT C.

45-13-5.7.

The commenter states to shorten the time frame for issuing permits may or may not be acceptable to the Environmental Council as they are not convinced that the DAQ has the resources to implement it properly without moving too quickly on some permits.

RESPONSE C.

The DAQ believes it can process appropriate permits within the time frame proposed in the rule.

COMMENT D.

45-13-5.12.a.

The commenter believes the language regarding general permits seems to offer too much discretion to the Secretary and there is no confidence that the general permit process will protection public health or the environment. The commenter reminds the DAQ that regulations should be written so that no matter who the Secretary is, there will be consistency in the Agency's standards and ability to protect the public and should not be written with the current incumbent in mind.

RESPONSE D.

The rule significantly expands the types of sources that are eligible for a general permit. Previously, only entire facilities were eligible. With the proposed change, sources such as spray booths or boilers within a facility, may be able to receive general permits. By broadening the scope of the sources that can be covered by general permits, DAQ also broadened the scope of the size of the sources. Therefore, the concept of Class I and Class II general permits was proposed. While the decision of whether a general permit will be proposed as a Class I or Class II will be made by the Secretary after considering those items listed in section 5.12.a., the public will be given the opportunity to comment on the proposed general permit before it is made final. Finally, and perhaps most importantly, all general permits (Class I and II) must ensure compliance with all applicable rules, regulations and the State Air Pollution Control Act and thus will protect human health and the environment.

III. Commenter: West Virginia Oil and Natural Gas Association

COMMENT A. 45-13-2.17.

The commenter strongly supports the proposed change in subsections 2.17 and 2.24 to adjust the permit-triggering threshold to more than 6 pounds per hour (pph) and 10 tons per year (tpy).

RESPONSE A. No response required.

COMMENT B. 45-13-2.17.

The commenter suggests that this section continues to lack any definition of how an "increase" is to be calculated, leaving regulated entities to guess. The commenter strongly urges the DAQ to utilize a current actual or current allowable to anticipate future actual tests to set a baseline from which "increases" are calculated.

RESPONSE B. This issue is beyond the current scope of this rulemaking. As stated in response I.A. above, DAQ's proposed rule revisions are limited in nature, and the agency is not entertaining the wholesale revision of this rule as it did in the year 2000.

To restate the DAQ's position on this particular issue, however: When a source has no permit or otherwise enforceable limitation of emissions, the DAQ has always used the actual to potential test to determine if the modification "trigger" levels will be exceeded. This is done in accordance with current 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 may 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. DAQ does recognize this issue may be ripe for discussion in future rulemaking efforts depending upon the status of EPA's New Source Review guidance.

COMMENT C. 45-13-2.17.

The commenter believes the rule needs to be clear that an increase in actual emissions that does not exceed already allowable emissions does not require a permit modification or permit for sources governed by either a permit or a limit in a rule, such as in Rule 10, which apply regardless of whether a source has a permit.

RESPONSE C. Please see response to III. B.

COMMENT D. 45-13-2.17.

The commenter believes the rule does not address how contemporaneous decreases are to be factored into the calculation so as to allow "netting" for sources which are obtaining permits. In such cases, the commenter believes those decreases would be enforceable and should be allowed, just as they are for major sources under Regulations 14 and 19.

RESPONSE D. Please see response to III. B.

COMMENT E. 45-13-2.17.b.

The commenter is concerned that this subsection regarding Hazardous Air Pollutants currently applies on "an aggregated basis," but also does not establish a baseline nor describe how the "aggregation" is to be calculated. To clarify this, the commenter suggests that the subsection be modified to add the words, "the potential to emit," after the words, "year of," and by adding the words, "all Hazardous Air Pollutants involved in the subject increase, not per pollutant," after the word, "basis." The commenter also suggests that this section is more stringent than federal counterpart language, in particular, section 112(n)(4) of the Clean Air Act.

RESPONSE E. See response to III.B.

COMMENT F. 45-13-15.

The commenter believes that at a minimum, Section 15 should be tied to subsection 2.24.c. such that no limits, even PTEs, would be put in permits for sources with PTEs smaller than the thresholds in 2.24.c.

RESPONSE F. See response to III.B.

COMMENT G. 45-13-2.17.f.2.

The commenter believes that in order to eliminate ongoing misunderstandings about engine replacements at natural gas compressor stations, the following words should be added to this subsection after the closing parentheses: "provided, further, that in the case of the replacement of a natural gas compressor engine, such replacement shall be considered routine so long as the replacement engine does not exceed the horsepower of the unit it replaces and so long as the potential to emit nitrogen oxides and carbon monoxides is not increased." Additionally, the commenter suggests that such replacement be considered "routine" so long as the PTE of the replacement unit does not exceed the PTE of the replaced unit and the new

unit is not a major source nor subject to any New Source Performance Standards.

RESPONSE G. See response to III.B. DAQ also notes this issue may be impacted by the results of several enforcement actions recently initiated by EPA.

COMMENT H. 45-13-2.17.f.2.
The commenter suggests that if deemed necessary, a notice provision could be added to require the operator to apprise the DAQ in writing of the change-out. However, since failure to qualify for the exemption would be a direct violation of the permit requirement of this rule, the commenter does not think notice is truly necessary. A source owner or operator would have to be able to document compliance with this provision/restriction to avoid a violation of the rule.

RESPONSE H. See response to III.G.

COMMENT I. Definition of Potential to Emit, 45-13-2.19.a.
Commenter believes this subsection reflects a proposed minor amendment. In addition, the commenter requests that the last sentence of that subsection be replaced with the following language: "The source shall clean, regenerate or replace the catalyst in accordance with the specifications of the element's manufacturer. The effectiveness of the catalyst shall also be verified by the source on an ongoing basis pursuant to good operating practices documented in records which must be kept by the source reflecting periodic routine checks of catalyst element operations."

RESPONSE I. See response to III.B.

COMMENT J. 45-13-4.1.b.
The commenter notes that this subsection has a 60-day limit within which the Secretary is to act upon Class I administrative updates. However, the commenter states there is no time limit on processing Class II updates. The commenter urges that this subsection be revised to process simple Class I updates within 30 days from receipt of a complete application, and Class II updates within 60 days.

RESPONSE J. Although the DAQ has proposed certain revisions to agency review times elsewhere in the rule, it does not agree with the commenter's suggestion. This issue was heavily debated in the stakeholder process in the year 2000, and the DAQ continues to believe that the current time frames are appropriate. Actual experience over the last two years has shown that the agency is processing many applications for administrative updates and the

current time frames are appropriate.

COMMENT K.

45-13-4.1.

The commenter believes this section is proposed to be revised to require that no administrative update be inconsistent with the terms and conditions of the applicable permit. The commenter believes the intent may be to bar the use of administrative updates to alter any of the emissions limits or performance standards in a general permit and requests a bit more.

RESPONSE K.

This comment incorrectly characterizes the proposal. The proposed language just applies to a general permit registration and was necessary to prevent the situation where an administrative update to a general permit registration is in conflict with or inconsistent with the conditions of the general permit itself.

COMMENT L.

45-13-4.2.a.4.

The commenter believes this section only allows the use of a Class I update to incorporate more stringent requirements from an applicable rule promulgated after the permit was issued. The commenter believes this should really work both ways. The commenter questions if there was a good reason to change the rule (after notice and comment), then why should that not form the basis for a Class I update? The commenter states this problem is well-illustrated in the compressor station General Permit, which contains the old Regulation 13 provisions, not those of the current version, and will soon be at odds with the new provisions, if adopted. The commenter requests that either General Permits be regularly updated or this provision should allow the terms of any effective rules to prevail where inconsistent with any term or condition in a General Permit.

RESPONSE L.

This issue is beyond the current scope of this rulemaking and was thoroughly discussed in the stakeholders' group and rulemaking process in the year 2000. However, it is the intent of DAQ to update general permits as needed.

COMMENT M.

45-13-4.2.b.

The commenter states this subsection deals with Class II administrative updates which, through the proposed amendment to section 4.3., would apply to a "general permit registration." The commenter believes subsection 4.2.b.1. is so broad that it appears to cover everything short of a "modification" that is not a Class I update. The commenter points out that if this section is interpreted to apply to superceding rule changes, then it would cost each source \$300, an indeterminate waiting period, and public Notice Level A under section 8.3. (Class I legal advertisement and 30-day comment period). The commenter suggests this seems like overkill for sources governed by general permits for something so simple as, for example,

changing a boilerplate condition to conform to a new effective rule that is deemed "less stringent" or to renumber emissions points differently than in the original General Permit registration, but which does not change anything else.

RESPONSE M. This issue is beyond the current scope of this rulemaking and was thoroughly discussed in the stakeholders' group and rulemaking process in the year 2000. The situation proposed by the commenter cannot occur. To clarify, any changes to the terms and conditions (including updates to rule language or citations) of an existing general permit can only be made by the DAQ after the appropriate public notice. Administrative updates to a general permit registration are in actuality updates to the application. This type of update to general permit registrations is common, and the rule has been revised to clarify the situation.

COMMENT N. *Class I and Class II General Permits*
The commenter states that subsection 5.7 contains the first references to a "Class II general permit," and it would establish a 90-day period for action by the Secretary on a Class II general permit and 45 days for a Class I permit. Commenter believes both of these time periods apply to the application by a source to register for coverage under a given Class I or Class II permit. Since the general permits themselves would have already undergone full notice and comment and are not subject to individualized terms and conditions, the commenter does not understand why the DAQ contemplates a need to take twice as long for the approval of a registration for coverage for a Class II general permit. Whether such a permit is Class I or Class II, the commenter believes that review of a completed registration for coverage should be achievable in either case within 45 days of receipt of a complete registration application.

RESPONSE N. DAQ's proposed changes concerning general permits will decrease the rule's review times of general permit registrations from 180 days to 90 days for Class II general permit registrations and 180 days to 45 days for Class I general permit registrations. The less complex Class I general permit registrations do not require public notice and can therefore be processed more quickly than the Class II general permit registrations, which are subject to a 30-day public notice. The DAQ believes the proposed time periods are appropriate considering the type of actions being processed. Also see response VI.G.

COMMENT O. *45-13-5.12.a.*
Commenter states this section seems to indicate that general permits will be classified as either Class I or Class II at the time they are issued and go through public comment. However, the commenter believes this subsection

should be amended slightly to make this clear, so that there is no implication that the designation will be made source-by-source. The commenter suggests the addition of the following sentence at the end of the subsection: "The designation of Class I or Class II for a general permit shall be made at the time the permit goes through public comment and adoption for the source category governed by the general permit."

RESPONSE O. DAQ agrees with the commenter that this issue needs clarified and has revised the rule accordingly.

COMMENT P. 45-13-5.12.b.
Commenter is concerned that in examining sections 8 and 12, the proposed revisions make it clear that Class II general permit applications for coverage under such permits is proposed to be subject to full notice and comment, just as permit applications would be for new or modified sources. The commenter cannot understand the purpose or necessity for such individual notice and comment for an individual source simply applying to register for coverage under an already adopted General Permit. The commenter believes the terms and conditions of the General Permit itself should satisfy any concerns with respect to the operation of any qualifying source to operate under those terms. The commenter believes with the newly proposed provisions regarding full notice for Class II General Permits, there is really no advantage left to using such a General Permit or registering for coverage under one as opposed to obtaining an individual permit. The commenter believes the only possible advantage is the proposed somewhat shorter time period within which registration might be approved as opposed to the approval time for a separate permit.

RESPONSE P. The public notice provisions relative to general permit registrations have been in the rule since 1994. The proposed change is to retain such individual public notice, but only for sources applying to register under a Class II general permit, not for those applying under a Class I general permit. Also see response II.D., III.N. and VI.G.

COMMENT Q. *The commenter supports the proposed change to return to a 30-day notice of filing and a 30-day notice of draft permits.*

RESPONSE Q. No response required.

COMMENT R. 45-13-8.5.a.
The commenter is glad to see the proposed revisions regarding the placement of a sign at the entrance of a source or proposed site regarding the application for a permit. The commenter believes this revision could be

further improved by altering the new beginning language to read: “. . . Secretary’s placement of a Class I legal advertisement of intent to issue, the applicant shall post . . .”

RESPONSE R. The DAQ agrees the placement of such a sign should occur close in time to the Secretary’s issuance of a draft permit. Given the timing issues involved in the actual publication of a Class I legal ad, the DAQ believes it is appropriate to keep a “not later than” date of 3 working days for the posting of such a sign but will narrow the “start” date to within one week of the publication of the draft permit. A corresponding change will be made in section 8.4.a for the commercial display ad posting.

COMMENT S. *The commenter supports the elimination of the requirement in the rule that Class I legal ads also be posted in the applicable county courthouse. In light of all the other public notice methods, such posting is unnecessary. The commenter also suggests that the DAQ’s legal ad contain a reference to the agency’s website address.*

RESPONSE S. No response required. The DAQ will consider the commenter’s suggestion that the Class I legal ad contain a reference to the agency’s website address.

COMMENT T. *Permit Application Fees*
Although the commenter supports the changes in section 12.1, the commenter does not understand why the provisions of subdivision 3.4.b. of Rule 22 relating to additional fees would apply for sources seeking coverage under Class II general permits.

RESPONSE T. It is expected that sources covered under a Class II general permit could be subject to a New Source Performance Standard (NSPS), a National Emission Standard for Hazardous Air Pollutants or Maximum Achievable Control Technology (NESHAPs), or a Toxic Air Pollutant requirement, and such language is therefore appropriate.

COMMENT U. *The commenter asks that the DAQ examine the provisions of Rule 22 regarding the annual fees for certificates to operate as they may apply to subsection 12.1. The commenter believes Rule 22 would apply an annual fee only to compressor engines with greater than a 1,000 horsepower, but other smaller sources and engines appear to be subject to an annual fee of \$200, whether or not the source holds a permit. The commenter suggests if this is not the intention of the DAQ in applying Rule 22, the subsection 12.1 of Rule 13 be further amended to make it clear that the holders of general permits are not subject to any fees for annual certificates to operate under Rule 22.*

RESPONSE U. The proposed changes to the rule reduce application fees for general permits from \$1000 to \$250 for Class I and \$500 for Class II general permits, with no fee for “small businesses” applying for Class I general permits. Also, the proposed rule exempts Class I general permits from any additional fees for NSPS, NESHAPs, etc. In light of these significant reductions in fees associated with construction permits, the DAQ is not inclined to make any further reductions in fees which are otherwise applicable.

COMMENT V. *The commenter supports the proposed revisions regarding de minimis sources and maintenance activities.*

RESPONSE V. No response required.

IV. Commenter: West Virginia Department of Agriculture

COMMENT A. 45-13-5.12.a.
The commenter recommends that the following be added to this section: “Stationary sources used as a component of an agricultural operation shall be covered by a Class I general Permit.” The commenter believes it is important that on-farm incinerators be guaranteed the ability to operate under a Class I general permit.

RESPONSE A. At this point, the DAQ is merely establishing the mechanism in the rule for issuing Class I and Class II general permits as well as the general factors the DAQ must consider in deciding whether a particular type of source is suitable for a general permit, and if so, which type of general permit. It is premature for the DAQ to state which types of sources will be covered by future general permits, as the agency has not begun this type of review. The DAQ will be doing so in the future and will certainly give serious consideration to the commenter’s point at that time. Also see response II.D.

COMMENT B. 45-13-5.12.b.
The commenter believes the annual cost of obtaining an operating certificate for an on-farm incinerator as per 45CSR22 is an impediment to adoption of this mechanism of mortality disposal by West Virginia farmers. The commenter recommends inserting the following after section 5.12.a.: “§5.12.b.: Stationary sources used as a component of an agricultural operation shall be exempt from fees prescribed by 45CSR22, §4.3. The annual fee for a certificate to operate for stationary sources used as a component of an agricultural operation shall be \$100.00.”

RESPONSE B. Please see response to III.U.

V. Commenter: West Virginia Chamber of Commerce

COMMENT A. Modification Thresholds

The commenter believes it is proposed that the term "modification" be revised to require a permit for modifications that result in emissions of six pounds per hour "and" 10 tons per year or more and also for emissions that result in "more than 144 pounds per calendar day." Although the commenter supports the inclusion of the "and" in the definition, it questions the need for the addition of the 144 pounds per calendar day threshold. The commenter believes the DAQ has not provided any rationale for this limitation in relation to the regulated pollutants and would be well for the Agency to provide additional discussion concerning this proposed change in order to educate the commenters as to the purpose served by this revision.

RESPONSE A. The additional permitting threshold limit of 144 pounds per day is meant to prevent the emission of a large amount of a criteria pollutant, such as VOC, over a short period of time without first being reviewed for compliance with any appropriate State rules or federal regulations and acquiring the appropriate permit. Such an emission may violate a National Ambient Air Quality Standard and be contradictory to the intent and purpose of Rule 13. Under the current rule, with a threshold limit of 6 pph or 10 tpy, the potential for large emissions over a short time period did not exist; however, by changing the rule to 6 pph and 10 tpy, such a potential exists and the 144 pounds per day will minimize that risk. Also see response II.A.

COMMENT B. General Permits

In general, the commenter supports the concept of creating a program for enhancing the usefulness of the State General Permit program. The commenter believes the DAQ is attempting to modify the general permit program with a view toward the goal. The commenter supports the creation of a modified fee structure for general permits and believes it would be well for the Agency to provide additional discussion concerning these proposed changes in order to educate the commenters as to the intended result of these modifications.

RESPONSE B. The commenter is correct that the DAQ is proposing to modify the rule to enhance the utility of the general permit under the rule. It is doing so by the following proposed revisions:

(1) shortened agency review times from 180 days to 90 days for Class II general permit registrations and 180 days to 45 days for Class I general permit registrations;

(2) expanded the general permit authority by removing the “facility-wide” restriction;

(3) provided for simpler general permits (Class I) which do not require public notice for each registration and are subject to smaller fees;

(4) provided the ability to revise general permit registrations through administrative updates; and

(5) reduced application fees for general permits from \$1000 to \$250 for Class I and \$500 for Class II general permits, with an exemption from application fees for “small businesses” applying for Class I general permits and an exemption from additional fees for Class I general permits.

COMMENT C.

Temporary Permits

The commenter believes the DAQ has proposed removal of the time frame within which the agency would review the request for a temporary permit. Understanding the very nature of such permits, the commenter believes the agency would be well served by maintaining a limitation on review time; however, had the agency provided a rationale for this change, the commenter would better understand the agency’s concerns. The commenter does not support this modification.

RESPONSE C.

The time frame within which the agency will process a temporary permit has not been deleted. It has been moved to section 5.7 of the rule.

VI. Commenter: Independent Oil and Gas Association of West Virginia

COMMENT A.

The commenter recommends that the DAQ include a provision that specifies which rule is federally effective for the purposes of compliance with the West Virginia State Implementation Plan and the federal Clean Air Act.

RESPONSE A.

This comment is beyond the scope of the proposed revisions and thus not appropriate for action at this time. DAQ notes, however, that information on which rule has been approved as part of the State Implementation Plan is available, both in the Federal Register at 40 CFR Part 52, Subpart XX and from the DAQ upon request.

COMMENT B.

The commenter supports the DAQ’s revision to the permitting threshold to 6 pph and 10 tpy, or more than 144 pounds per day. This change to the threshold for minor source permitting is a positive revision to the air permit program. By allowing very small sources to be introduced without the delays

attendant to the permitting process, West Virginia's businesses (and primarily small businesses) will have the flexibility to establish new operations or make minor changes to existing operations in a timely manner. In addition, this change allows the agency's resources to be focused on sources of significant emissions rather than the multitude of very small sources that can consume enormous amounts of agency staff time.

RESPONSE B. No response required.

COMMENT C. 45-13-2.17.f.2.
The commenter recommends defining routine replacement as replacement of an engine or other source with any other similar kind of engine or source, as long as the replacement does not exceed the permitted potential to emit of engine or source being replaced. Commenter believes such a provision would build flexibility into the rule while still maintaining the performance standards of the existing permit.

RESPONSE C. See response III. G.

COMMENT D. 45-13-2.19.a.
The commenter recommends that the catalyst replacement provision be based on the manufacturer's recommendations or specifications rather than an arbitrary time.

RESPONSE D. See response III. B. and III.I.

COMMENT E. 45-13-4.1.b.
The commenter requests that the time line for approval of an application of a Class I administrative update be revised to 30 days and the time line for approval of an application of a Class II administrative update be limited to 45 days.

RESPONSE E. See response III.J.

COMMENT F. 45-13-5.12
The commenter generally supports the two-tiered General Permit approach in concept but requests that the DAQ clearly define the type of Class I and Class II sources that are eligible for general permits and identify whether the existing General Permits will be either Class I or Class II. The commenter also questions whether there is a presumption that only temporary and intermittently operated sources qualify as Class I general permits.

RESPONSE F. See response II.D. and IV.A. Further, DAQ does not believe the rule creates such a presumption; it merely requires the Secretary to consider all the factors listed in the rule. In addition, the DAQ notes it will be reviewing the general permits now in existence and determining which Class is appropriate.

COMMENT G. 45-13-5.7.
The commenter recommends that the DAQ revise the permitting time lines for Class I general permits to 21 days and for Class II general permits to 45 days and states that obtaining general permits should be simpler and quicker than obtaining an individual permit. The commenter states that the proposed rule enlarges the time required to obtain coverage under a general permit.

RESPONSE G. DAQ points out it is incorrect to state that the proposed rule enlarges the time frame for obtaining coverage under the general permit. The current rule allows up to 180 days for the DAQ to process a general permit registration. The proposed rule's time frames are substantially less, allowing up to 90 days for a Class II general permit registration and up to 45 days for a Class I general permit registration. Moreover, although a Class I general permit registration does not have to be put to public notice, the DAQ believes that an outside time of 45 days may be necessary to process some of the more complex registrations. Also see response III.N.

COMMENT H. *The commenter recommends that with respect to the permitting time lines for Class I and Class II general permits, the permit approval become automatic upon the expiration of the specified time, unless extended by the DAQ.*

RESPONSE H. DAQ disagrees with this comment. Automatic approval is an extreme measure to ensure the DAQ meets its time lines and may result in improvidently issued permits. The DAQ takes the regulatory time lines seriously and will continue to do so without such an "automatic" permit.

COMMENT I. *Commenter requests that the DAQ include language in section 8.1 expressing that no public notice is required for registration under a Class I general permit.*

RESPONSE I. DAQ agrees there is some ambiguity in the language, but believes the problem lies with section 8.4, not 8.1. It is clear in sections 8.1, 8.2 and 8.3 that Class I general permit registrations are not covered and therefore do not have to be maintained on the list of applications nor be posted by the applicant as a Class I legal ad. The DAQ intended the same result in section 8.4, but believes the language needs amended to make this clear. Section 8.4 has been revised to insert the word "registrations" after "Class I general permits" and the reference to section 8.3 restored. The reason for the explicit

proviso for Class I administrative updates and general permit registrations is that subsection 8.4 has “catch-all” language which captures all applications not otherwise exempted in the subsection. Subsection 8.3 is set up differently in that it specifically lists all applications covered by the subsection.

COMMENT J. *The commenter requests that the DAQ clarify whether the applicant for coverage under a Class II general permit must place the Class I legal advertisement in advance of filing the completed registration with the DAQ. The commenter opposes such a requirement.*

RESPONSE J. DAQ responds that section 8.3 clearly states that the applicant shall place a Class I legal ad “at the time” that an application is filed. The DAQ is aware of the confusion mentioned by the commenter and intends to make appropriate revisions to the referenced general permit.

COMMENT K. *The commenter requests that the DAQ clarify whether pursuant to section 8.4, the DAQ must provide the public 30-days notice prior to the issuance of a Class II general permit. The commenter recommends that no such notice be required given the fact there is sufficient opportunity for the public to comment on the applicant’s request for coverage under the general permit.*

RESPONSE K. The DAQ intends the rule to subject all general permits, both Class I and Class II, to a 30-day public notice, and the agency believes sections 8.4 and 8.9 of the proposed rule so state. While the agency believes it has some discretion in deciding whether general permit registrations must be subjected to public notice, it believes the general permit itself, both Class I and Class II’s, must be publicly noticed and subjected to comment. The proposed rule strikes an appropriate balance with respect to public notice requirements for Class I and Class II general permit registrations, requiring notice for Class II’s, but not for Class I’s.

COMMENT L. 45-13-11.2.a.
The commenter requests that the DAQ reinstate the time required to approve or deny a request for a temporary construction or modification permit and believes such a provision is necessary to eliminate uncertainty in the permitting process.

RESPONSE L. See response V. C.

COMMENT M. 45-13-12.1.
The commenter supports the DAQ’s revisions of the fees for general permits, but questions the validity of subjecting Class II general permits to the

additional fee provisions of 45CSR22 §3.4.b.

RESPONSE M. The DAQ has reduced application fees for general permits from \$1000 to \$250 for Class I and \$500 for Class II general permits, with an exemption from application fees for “small businesses” applying for Class I general permits. Also, DAQ has exempted Class I general permits from the additional fees for NSPS, NESHAPs, etc. because these permits will generally be less complex. However, DAQ anticipates that the Class II general permits may be somewhat more complex and may on occasion implicate these federal emission standards. Also see response III.T.

VII. Commenter: West Virginia Manufacturers Association

COMMENT A. *The commenter supports the proposed change in the permitting threshold to 6 pph and 10 tpy, but doesn't believe the addition of the 144 pounds per calendar day threshold is justified for conventional, criteria pollutants because it is not needed for any short-term impact mitigation. The commenter does not believe that there will be any negative localized impacts from short-term emissions at minor new sources (less than 10 tons per year) of a criteria air pollutant. The commenter believes that under the proposed 144 pounds per calendar day threshold, sources would have to carefully track their daily emissions to be able to demonstrate that they qualified and continue to qualify for this exemption, which poses both record keeping and enforcement risks and obligations for what are very small sources in any case.*

RESPONSE A. See response II.A. and V.A.

COMMENT B. *The commenter wonders why a similar conformity change has not also been proposed in subsection 2.17.b. for Hazardous Air Pollutants. For the same reasons, the commenter supports changing the word “or” in this subsection to “and.” The commenter also believes a similar amendment should be made to subsection 2.24.c., as to the definition of “stationary source.”*

RESPONSE B. This approach is not appropriate for hazardous air pollutants (HAPs), because an emission rate of 2 pounds per hour over the course of a year could equal more than 8 tons which is very close to the amount which makes a source “major” for HAPs under the Title V program. Additionally, the current direction at the federal level is to address smaller sources of HAPs, and the DAQ believes it would be imprudent at this time to make the permitting thresholds for HAPs less stringent.

COMMENT C. *Commenter asks what is the baseline for calculating an emissions increase*

for minor sources? Commenter believes that a similar concept as major modifications to major sources, as EPA is currently proposing to go to a current actuals to representative future actuals test for determining whether an increase has occurred, should be applied for minor sources, also believing that using current allowables to future actuals or allowables, whichever is higher, is the more appropriate test for minor sources. Commenter believes with that in mind, it makes no sense to require permits for increases which are still within allowable limits established for that type of source in either a permit or rule, so long as it remains a minor source.

RESPONSE C. See response III.B.

COMMENT D. *The commenter found the term “general permit registration” to be somewhat awkward as a description for a source governed by a general permit and believes perhaps a distinction needs to be made in the proposed amendments to the rules between the act of filing a registration form with the DAQ with certain information in it and the approval by the Director of a source to be governed by a particular general permit. The commenter suggests the rules could refer to the filing of “registration forms” and approval as a “general permit source.”*

RESPONSE D. The DAQ believes the term is sufficiently descriptive.

COMMENT E. *The commenter is unclear about the DAQ's intention in establishing Class I and Class II general permits. The commenter asks if the DAQ intends by these new provisions to make general permits more available to sources which may hold other individual permits and will the permit designation be made at the time the general permit is adopted or on a case-by-case basis depending on where the source is located. The commenter does not understand why it should take as much as 90 days to complete the review of an application for coverage under a general permit, even a Class II general permit as the DAQ might envision that class.*

RESPONSE E. See response II.D., III.O., V.B. and VI.G.

COMMENT F. *The commenter notes that there is no specific change proposed to section 5.1 regarding allowable pre-construction activities for sources prior to the issuance of a permit. The commenter additionally notes that there is a continuing problem with the interpretation of subsection 5.1.h. and hopes that the DAQ might use this round of rule making to clarify the interpretation and application of subsection 5.1.h. by inserting the following sentence at the end of that subsection: “Such equipment and supplies may be stored or stockpiled at the facility, but not on the intended emissions unit’s final*

installation location, and no emissions unit may be erected or installed prior to permit issuance except for those limited activities expressly authorized in section 5.1.”

RESPONSE F. This issue is beyond the current scope of this rulemaking and was thoroughly discussed in the stakeholders’ group and the rulemaking process in the year 2000.

COMMENT G. *As the commenter reads the proposed amendments to sections 8.3 and 8.4, it appears that there can be at least some overlap in the 30-day periods involved between the initial placing of a Class I legal advertisement by the applicant and the issuance of the Class I legal advertisement of the DAQ’s intent to issue a permit. If this is true, the commenter has no objection to the proposed change.*

RESPONSE G. DAQ agrees the public notice periods can overlap.

COMMENT H. *The commenter believes that the expansion of notice provisions in section 8.4 should not be extended to Class II administrative updates or to so-called Class II general permits since this defeats the purpose of speedy action on minor permit matters that do not themselves constitute permit modifications.*

RESPONSE H. See response III.N., VI.G.and VII.

COMMENT I. *The commenter believes as to both the publishing of a commercial display advertisement and the posting of a sign at the entrance to a source or proposed site that the proposed language changes are trying to resolve the problem of timing, but might be made a bit more clear. Accordingly, the commenter suggests that in both subsection 8.4.a. and 8.5.a. the initial phrase “At any time prior to the Secretary’s placement of a Class I legal advertisement or “ be amended by adding the words “of intent to approve” and “of intent to issue,” respectively, after the word “advertisement.”*

RESPONSE I. DAQ agrees with the commenter and has revised the rule accordingly.

COMMENT J. *The commenter states that in addition to the changes being proposed in 8.5.a. above, that this subsection does not say when an applicant is allowed to remove the required sign. Accordingly, the commenter requests that language be added to subsection 8.5.a. to read as follows and be added after the last sentence: “The applicant must post the sign for a period of at least one calendar week.”*

RESPONSE J. It is the intent of the DAQ that this sign would be posted throughout the 30-day public notice period. The rule has been revised accordingly.

COMMENT K. *The commenter supports the proposed deletion of the requirement to post notice at the county courthouse.*

RESPONSE K. No response required.

COMMENT L. *The commenter states that in subsection 4.1.b., a minor amendment is proposed, but the DAQ is perpetuating language that states that the secretary may take final action on any Class II request within 60 days from receipt of a permit application. The commenter believes this leaves the Agency with no time limit on processing a Class II request and that a time period should be instituted in this subsection and proposes that a maximum 75-day period apply to updates for Class II requests since these are updates which do not constitute modifications and are, therefore, somewhat less complex to process.*

RESPONSE L. See response III.J.

COMMENT M. *The commenter supports the proposed changes in the de minimis list.*

RESPONSE M. No response required.