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

Form #3

Do Not Mark In This Box

FILED

2004 AUG 25 P 3:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Dept. of Environmental Protection - Div. of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W.V. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR14

TITLE OF RULE BEING AMENDED: Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD)

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.

Stephanie R. Timmermeyer
Authorized Signature

Stephanie R. Timmermeyer, Secretary

QUESTIONNAIRE

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

DATE: August 25, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (*Agency Name, Address & Phone No.*) West Virginia Divison of Air Quality
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304-2943
Phone No.: 926-3647

LEGISLATIVE RULE TITLE: 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD)

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 30, 2004

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

Class I Legal Advertisement; Charleston Daily Mail and Charleston Gazette
Copy of Public Notice sent to DAQ mailing list
Public Notice placed on DAQ's web site

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

Public hearing held and Public Comment Period Ended - August 2, 2004

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

Attached X No comments received _____

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

August 25, 2004

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

John A. Benedict, Director
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304

Phone No.: (304) 926-3647 Fax: (304) 926-1713

E-mail: jbenedict@wvdep.org

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

See "f" above

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

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

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration" (PSD)

A. AUTHORITY: W.Va. Code §22-5-4

B. SUMMARY OF RULE:

This rule establishes a state construction permit program consistent with the federal Clean Air Act's Title I program and implementing regulations at 40 CFR§51.166, "Prevention of significant deterioration of air quality." 45CSR14 is part of the State Implementation Plan (SIP) and sets forth the criteria and procedures for major stationary sources to obtain a permit to construct, operate and/or modify a major stationary source.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

As required by 40 CFR Part 51, Subpart I - "Review of New Sources and Modifications," this rule adopts criteria and procedures for the prevention of significant deterioration of air quality that are consistent with the governing federal regulation at 40 CFR§51.166. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under 40 CFR Part 51 and the CAA, as amended. Revisions to the rule include incorporation of the federal changes to 40 CFR §51.166 [67 FR 80186, published December 31, 2002], including provisions for Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations (PALs), Clean Units and Pollution Control Projects (PCP). These revisions will be submitted to US EPA for SIP approval.

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

45CSR14 establishes a state construction permit program consistent with the federal Clean Air Act's Title I program and implementing regulations at 40 CFR §51.166. The Secretary has determined that the proposed rule is no more or less stringent than the governing federal regulations.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

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

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 24, 2004 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

Thursday, June 24, 2004
1356 Hansford Street, Charleston, WV
1st Floor Conference Room – OER Conference Room

ATTENDEES:

Advisory Council Members:
Larry Harris (via conference call)
Jackie Hallinan
Rick Roberts
Debra Bias for Lisa Dooley
Bill Raney

DEP:
Joe Dawley, General Counsel
Ken Ellison, Director - Division of Land Restoration
Allyn Turner, Director – Division of Water and Waste Management
Bill Brannon, Division of Water and Waste Management
Mike Dorsey – Division of Water and Waste Management
Mike Zeto – Office of Environmental Enforcement
Joe Parker, Director, DEP Division of Mining and Reclamation
Charlie Sturey – DEP Division of Mining and Reclamation
Cindy Maynard – DEP Office of Environmental Advocate
Laura Crowder – DEP Division of Air Quality
Jim Mason – DEP Division of Air Quality
Connie Graytop Lewis – WV Environmental Council
Liz Garland – WV Rivers Coalition
Jason Bostic – WV Coal Association
Tim Beli – Nelson Brothers
Bruce Gilbert – Nelson Brothers

Joseph M. Dawley, WVDEP – General Counsel, called the meeting to order at 10:00 a.m.
Updates on rules were presented as follows:

Division of Air Quality - Jim Mason and Laura Crowder

- 45CSR14 - PSD rule under Part C of the CAA, 45CSR14 has not been revised since 1995. This rule establishes permit requirements for major sources in attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.
- 45CSR15 - NESHAP incorporation by reference ("IBR) rule under Part 61, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR16 - NSPS IBR rule under Part 60, is typically updated each year. Revisions to the rule accommodate annual IBR updates.
- 45CSR19 - NSR rule under Part D of the CAA, 45CSR19 has not been revised since 1993. This rule establishes permit requirements for major sources in non-attainment areas or that cause or

contribute to non-attainment areas. Revisions to the rule are required to incorporate revisions of federal counterpart language.

- 45CSR25 - Hazardous waste IBR rule is typically updated each year. Revisions to the proposed rule include general annual IBR updates: stylistic, citing and technical corrections, and revisions required to maintain consistency with the DW&WM's rule 33CSR20 and federal counterpart regulation. The consistency of 45CSR25, 33CSR20 and federal counterpart regulation is important to maintain EPA delegation of authority to implement and enforce the West Virginia RCRA Hazardous Waste Management Program.
- 45CSR34 - NESHAP IBR rule under Part 63, is typically updated each year. Revisions to the rule accommodate annual IBR updates.

Bill Raney inquired about the table in which mercury is crossed out. This was deleted from EPA's rule so it was deleted from DEP's rule.
Larry Harris also raised a question regarding the definition of visibility.

Office of Waste Management – presented by Mike Dorsey, Deputy Chief, DEP Division of Water and Waste Management

- 33 CSR 20 - Hazardous Waste Management Rule - The revisions in the proposed rule will adopt by reference federal regulations in effect as of July 1, 2004, primarily clarifications and technical corrections. These revisions allow the State to remain consistent with the federal program and to maintain State authorization of the federal program.
- 33 CSR 31 (Underground Storage Tank Fee Assessments) - This rule will increase the annual registration fee for the Underground Storage Tank Program from $25 per tank to $65 per tank. An emergency rule is already in place to implement the increase in fees.
-

The following were presented by Allyn Turner, Director, DEP Division of Water and Waste Management

- 33 CSR 2 (Sewage Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.
- 33 CSR 8 (Beneficial Sludge Management Rule) - The revision modify the restriction and location standards to allow disposal at the discretion of the secretary where the soil on the land has a surface permeability of less than 0.6 inches per hour and the applicant can demonstrate that the surface water and ground water will be adequately protected.

Office of Explosives and Blasting – presented by Joe Parker, Acting Director, DEP Division of Mining and Reclamation

- 199 CSR 1 (Surface Mining Blasting Rule) - The revisions include incorporation of several provisions from the Surface Mining Rule (38 SCR 2). These include adding the definitions of "community or institutional building," "public building," and "structure" and including provisions for the erection and maintenance of blasting signs. The proposed rule also includes revisions to the Certified Blaster enforcement provisions to address inconsistencies identified by the Federal Office of Surface Mining. Lastly, the proposed rule includes a provision that allows the Office of Explosives and Blasting to conduct an evaluation of a certified blasters performance.

Bill Raney inquired about page 22/Performance Evaluation – raising point about suspending license procedures. Mr. Raney indicated he would request a meeting to reconcile differences.

Office of Water Resources – presented by Allyn Turner, Director, DEP Division of Water and Waste Management

- 47CSR26 (NPDES Permit Fee Rule) - Proposed revision includes a new permit fee provision for concentrated animal feedlot operations ("CAFO") to implement a new federal permit program for CAFOs.
- 47 CSR 10 (NPDES Permit Rule) - Proposed revisions include provisions to implement the federal Phase II Storm Water program and the CAFO permitting program.

Rick Roberts inquired about the definition of storm water and permitted and non-permitted enforcement strategy. Director Turner indicated that this matter is still in discussion and there is no answer at this point.

Division of Mining and Reclamation

- 38CSR2 (Surface Mining and Reclamation Rule) The proposed revisions (1) change various sections of the rule to be consistent with its federal counterpart, (2) correct sections of the rule not approved by the Federal Office of Surface Mining, and (3) provide clarifications and remove contradictory language. These provisions pertain to the following subject areas: definition of previously mined areas, incidental boundary revisions, design criteria for impoundments, commercial forestry post-mining land use, homestead post-mining land use, revegetation standards, and the water supply replacement waiver.

Environmental Excellence Rule

- Optimistic about proposing at next session.
- Dave Bassage is working on draft, but has nothing to share at this point.

Rule Schedule

- July 28, 2004 – last day for filing proposed rules for public comment.
- August 27, 2004 – Must file rules with Secretary of State and Legislative Rule-Making Review Committee

DEP Division Updates

Division of Water and Waste Management

- Rick Roberts posed question regarding phosphorous and nitrogen in the Potomac River
- Allyn Turner explained about the Chesapeake Bay Program and the Gulf of Mexico Hypoxia actions nutrient criteria working group.

Air Quality

- NT, CT, NJ and PA are suing Allegheny Energy, Inc. – which affects 5 WV plants and three PA plants.
- States assert Allegheny modified power plants in violation of Prevention Significant Deterioration provision of ACT and such modifications caused excess NOx and SO2 emissions damage.
- States allege violations in construction/operation of major modifications to power plans without obtaining pre-construction permits.
- EPA not pursuing enforcement at this time.

- West Virginia previously declined to join in a suit against AEP alleging same type of violations.

Abandoned Mine Lands

Science Advisory Committee Statement

- Agency should have benefit of science before promulgating rules.
- Jackie Hallinan expressed concern about state agencies with political influence and what kind of science they intend to use in rulemaking.
- Ken Ellison wants science to be transparent with supporting and substantiating credit to help make better-informed decisions and move forward so all can see what is happening.

Proposed AML Enhancement Rule distributed.

- Will bring DEP in-line with Office of Surface Mining initiative.

DEP Web Page

- Link with web page not up yet.

Upcoming Advisory Council meetings tentative dates:

- September 16, 2004
- December16, 2004

Joe Dawley adjourned meeting at 12:15 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

Type of Rule: X Legislative ____ Interpretive ____ Procedural

Agency: Division of Air Quality

Address: 7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

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:
Any costs incurred by revision to this rule were included in cost estimates prepared for implementing Title V of the Clean Air Act, as amended, under 45CSR30.

3. Objectives of These Rules:

The purpose of this rule is to quantitatively define significant deterioration of air quality with respect to the desired degree of preservation of air quality for various areas and to set forth procedures for registration and reporting, and the criteria for obtaining a permit to construct or relocate a major stationary source or make a major modification to stationary source within a designated attainment or unclassified area of the State of West Virginia.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

No impact above that resulting from currently applicable federal emission standards.

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

No impact above that resulting from currently applicable federal emission standards.

C. Economic Impact on Citizens/Public at Large.

Proposed rule revisions will have minimal impact.

Date: June 29, 2004

Signature of Agency Head or Authorized Representative:

John A. Benedict, Director

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

SERIES 14
PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION FOR THE PREVENTION OF SIGNIFICANT DETERIORATION

§45-14-1. General.

1.1. Scope. -- This rule provides:

1.1.a. A mechanism ~~To~~ to ensure that economic growth will occur in harmony with the preservation of existing clean air resources; to prevent the development of any new non-attainment problems; to protect the public health and welfare from any adverse effects which might occur even at air quality levels better than the West Virginia and National Ambient Air Quality Standards; and to preserve, protect, and enhance the air quality in areas of special natural, recreational, scenic, or historic value;. ~~It~~ It is the intent of the ~~Director~~ Secretary to register and evaluate sources of air pollutants and to preclude the construction or relocation of any major stationary source or major modification in any area classified as attaining National or West Virginia Ambient Air Quality Standards or unclassifiable in which the establishment of such source or modification may interfere with the goals of the prevention of significant deterioration of air quality levels:; and

1.1.b. ~~The purpose of this rule is~~ A method to quantitatively define significant deterioration of air quality with respect to the desired degree of preservation of air quality for various areas and to set forth procedures for registration and reporting, and the criteria for obtaining a permit to construct or relocate a major stationary source or make a major modification to a stationary source within a designated attainment or unclassified area of the State of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this rule.

1.2. Authority. -- W. Va. Code ~~§22-5-1 et seq~~ §22-5-4.

1.3. Filing Date. -- ~~April 28, 1995.~~

1.4. Effective Date. -- ~~May 1, 1995.~~

1.5. ~~Type. -- Incorporation by reference -- Federal Counterpart Regulation. -- Not Applicable.~~ Federal Regulation. -- Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will, for the purpose of this rule, be construed as that version which was in effect as of ~~July 1, 1994~~ July 1, 2004.

1.6. Former Rules. -- This legislative rule amends 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration" which was filed on April 28, 1995 and became effective on May 1, 1995.

§45-14-2. Definitions.

2.1. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as described below:, except that this definition shall not apply for calculating whether

a significant emissions increase has occurred, or for establishing a PAL under section 25. Instead, subsections 2.63 and 2.8 shall apply for those purposes.

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~~ consecutive 24-month 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 emissions for the unit are equivalent to the actual emissions of the unit.

2.1.c. For any emissions unit ~~(other than an electric utility steam generating unit specified in paragraph 2.1.d.)~~ which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

~~2.1.d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, provided the source owner or operator maintains and submits to the Director, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the Director if the Director determines such a period to be more representative of normal source operations following the physical or operational change.~~

2.2. "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in subsection 2.8) of all emissions units (as defined in subsection 2.27) at the source, that emit or have the potential to emit the PAL pollutant.

~~2.2.~~2.3. "Administrator" means the Administrator of the United States Environmental Protection Agency.

2.4. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

~~2.3.~~2.5. "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

~~2.4.~~2.6. "Air pollution" or "statutory air pollution" means and is limited to the discharge into the air by the act of man 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.

~~2.5.~~2.7. "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally

enforceable limits or limits enforceable by the ~~Director~~ Secretary which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

~~2.5.a.~~2.7.a. The applicable standards as set forth in 40 CFR Parts 60~~,~~ and 61~~, and 63~~;

~~2.5.b.~~2.7.b. The applicable State of West Virginia emissions limitations or permit conditions, including those with a future compliance date; or

~~2.5.c.~~2.7.c. The applicable federally enforceable emissions limitations or permit conditions, including those with a future compliance date.

2.8. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subdivisions 2.8.a through 2.8.d.

2.8.a. For any existing electric utility steam generating unit, baseline actual emissions means the average emission rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

2.8.a.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2.8.a.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

2.8.a.3. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.8.a.4. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision 2.8.a.2.

2.8.b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Secretary for a permit required under this rule, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

2.8.b.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2.8.b.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

2.8.b.3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with

which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 45CSR19-8.6.

2.8.b.4. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.8.b.5. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs 2.8.b.2 and 2.8.b.3.

2.8.c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

2.8.d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision 2.8.a, for other existing emissions units in accordance with the procedures contained in subdivision 2.8.b, and for a new emissions unit in accordance with the procedures contained in subdivision 2.8.c.

~~2.6.~~2.9. "Baseline area" means any county of the State of West Virginia in which a major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the ~~Director~~ Secretary rescinds the corresponding minor source baseline date in accordance with ~~paragraph 2.29.d.~~ subdivision 2.42.d.

~~2.7.~~2.10. "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and includes:

~~2.7.a.~~2.10.a. The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

~~2.7.b.~~2.10.b. The actual emissions representative of sources in existence on the applicable minor source baseline date. However, the following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

2.10.b.1. actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

2.10.b.2. actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

~~2.8.~~2.11. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

~~2.9.~~2.12. "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the ~~Director~~ Secretary, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel ~~combination~~ combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any federally enforceable emissions limitations or emissions limitations enforceable by the ~~Director~~ Secretary. If the ~~Director~~ Secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

~~2.10.~~2.13. "Building, Structure, Facility, or Installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are a part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two (2)-digit code) as described in the Standard Industrial Classification Manual, 1987 (United States Government Printing Office stock number GPO 1987 0-185-718:QL 3).

~~2.11. [RESERVED]~~

2.14. "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

~~2.12.~~2.15. "Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

~~2.13.~~2.16. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy -- Clean Coal Technology", up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for USEPA. The Federal contribution for a qualifying project shall be at least twenty (20) percent of the total cost of the demonstration project.

2.17. "Clean Unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to section 22; or any emissions unit that has been designated by the Secretary as a Clean Unit, based on the criteria in subdivisions 23.3.a through 23.3.d; or any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to regulations approved into the State Implementation Plan in accordance with 40 CFR § 51.165(c) or § 51.166(u); or any emissions unit that has been designated as a Clean Unit by the Administrator in accordance with 40 CFR § 52.21 (y)(3)(I) through (iv).

~~2.14.~~2.18. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

~~2.14.a.~~2.18.a. begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

~~2.14.b.~~2.18.b. entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

~~2.15. [RESERVED]~~

~~2.16.~~2.19. "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the ~~Director~~ Secretary from requesting or accepting any additional information.

~~2.17.~~2.20. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

2.21. "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

2.22. "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

2.23. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and to record average operational parameter value(s) on a continuous basis.

~~2.18. "Director" means the Director of the Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.~~

~~2.19. "Division of Environmental Protection" or "DEP" means the Division of Environmental Protection as defined in W. Va. Code §§22-1-1 et seq.~~

2.24. "Department of Environmental Protection" or "DEP" means the Department of Environmental Protection as defined in W. Va. Code §22-1-4.

~~2.20.~~2.25. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five (25) MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

~~2.21~~2.26. "Emission" means the release, escape or discharge of air pollutants into the air.

~~2.22.~~2.27. "Emissions unit" means any part of a stationary source ~~which emits or would have the potential to emit any regulated pollutant.~~ that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in subsection 2.25. For purposes of this rule, there are two types of emissions units as described in subdivisions 2.27.a and 2.27.b.

2.27.a. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

2.27.b. An existing emissions unit is any emissions unit that does not meet the requirements in subdivision 2.27.a.

~~2.23.~~2.28. "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

~~2.24.~~2.29. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator ~~of the United States Environmental Protection Agency (USEPA)~~ including those requirements developed pursuant to 40 CFR Parts 60, 61 and 63, rules of the approved West Virginia State Implementation Plan ~~of the State of West Virginia~~, any permit requirements established pursuant to 40 CFR 52.21 or this rule, and any operating permits issued under a ~~USEPA-approved~~ program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

2.30. [Reserved.]

~~2.25.~~2.31. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

2.32. [Reserved.]

2.33. [Reserved.]

2.34. [Reserved.]

2.35. [Reserved.]

~~2.26.~~2.36. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

2.37. "Lowest achievable emission rate (LAER)" means, for any source, the more stringent of the following:

2.37.a. The most stringent emissions limitation which is contained in the

implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2.37.b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emission rate for the new or modified emissions units within the stationary source. In no event shall the application of the term permit a new or proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

2.38. [Reserved.]

2.39. Major emissions unit means:

2.39.a. Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

2.39.b. Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the CAA, an emissions unit would be a major emissions unit for VOC if the unit is located in a serious ozone non attainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

~~2.27.~~2.40. "Major modification" means any physical change in or change in the method of operation of a major stationary source which results in: a significant ~~net~~ emissions increase (as defined in subsection 2.75) of any regulated NSR pollutant (as defined in subsection 2.66); and a significant net emissions increase of that pollutant from the major stationary source. However, the following actions do not constitute a physical change or change in the method of operation:

~~2.27.a.~~2.40.a. Routine maintenance, repair, and replacement.

~~2.27.b.~~2.40.b. Use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

~~2.27.c.~~2.40.c. Use of an alternative fuel by reason of an order or rule under section 125 of the ~~Clean Air Act~~ CAA.

~~2.27.d.~~2.40.d. Use of fuel generated from municipal solid waste as an alternative fuel at a steam generating unit.

~~2.27.e.~~2.40.e. Use of an alternative fuel or raw material by a stationary source, provided that:

2.40.e.1. Prior to January 6, 1975, the source was capable of accommodating such alternative fuel or raw material, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under any permit issued or order entered pursuant to any rule of the ~~Director~~ Secretary after January 6, 1975;

2.40.e.2. The source is approved to use the alternative fuel or raw material under any permit issued under 40 CFR 52.21 or under any permit issued or order entered pursuant to any rule of the ~~Director~~ Secretary.

~~2.27.f.~~2.40.f. An increase in the hours of operation unless such increase would be prohibited by a Federal permit issued pursuant to

40 CFR 52.21 or by any permit issued or order entered pursuant to any rule of the ~~Director~~ Secretary.

~~2.27.g.~~2.40.g. An increase in the production rate unless such increase would be prohibited by a Federal permit issued pursuant to 40 CFR 52.21 or by any permit issued or order entered pursuant to any rule of the ~~Director~~ Secretary.

~~2.27.h.~~2.40.h. Any change in ownership at a stationary source.

~~2.27.i.~~2.40.i. The addition, replacement or use of a pollution control project, as defined in subsection 2.56, at an existing ~~electric utility steam generating unit, unless the Director~~ Secretary ~~determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except;~~ emissions unit meeting the requirements of section 24. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion.

~~2.40.i.1. When the Director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I, if any; and~~

~~2.40.i.2. The Director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.~~

~~2.27.j.~~2.40.j. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

2.40.j.1. The State Implementation Plan; and

2.40.j.2. Other requirements necessary to attain and maintain the ~~national ambient air quality standards~~ National Ambient Air Quality Standards during the project and after it is terminated.

~~2.27.k.~~2.40.k. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated NSR pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

2.40.k.1. The reactivation of a very clean coal-fired electric utility steam generating unit.

2.40.l. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under section 25 for a PAL for that pollutant. Instead, the definition at subsection 2.53 shall apply.

~~2.28.~~2.41. "Major modification for ozone" means a major modification for volatile organic compounds and NO_X.

~~2.29.~~2.42. "Major and minor source baseline date." --

~~2.29.a.~~2.42.a. "Major source baseline date" means:

2.42.a.1. in the case of particulate matter and sulfur dioxide, January 6, 1975;; and

2.42.a.2. in the case of nitrogen dioxide, February 8, 1988.

~~2.29.b.~~2.42.b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to the requirements of 40 CFR 52.21 or to this rule submits a complete application under this rule. The trigger date is:

2.42.b.1. In the case of particulate matter and sulfur dioxide, August 7, 1977, and

2.42.b.2. In the case of nitrogen dioxide, February 8, 1988.

~~2.29.c.~~2.42.c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

2.42.c.1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the ~~Clean Air Act~~ CAA for the pollutant on the date of its complete application under 40 CFR 52.21 or this rule; and

2.42.c.2. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

~~2.29.d.~~2.42.d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the ~~Director~~ Secretary may rescind any such minor source baseline date where it can be ~~shown~~ demonstrated to the ~~Director's~~ Secretary's satisfaction that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

~~2.30.~~2.43. "Major stationary source" means:

~~2.30.a.~~2.43.a. any of the following stationary sources of air pollutants which emits or has the potential to emit, one hundred (100) tons per year or more of any regulated ~~air~~ pollutant; ~~and is one of the stationary sources named in Table 1, or~~

- Fossil Fuel-fired Steam Electric Plants of More than 250 Million Btu/hr Heat Input,
- Coal Cleaning Plants (with thermal dryers),
- Kraft Pulp Mills,
- Portland Cement Plants,
- Primary Zinc Smelters,
- Iron and Steel Mill Plants,
- Primary Aluminum Ore Reduction Plants,
- Primary Copper Smelters,
- Municipal Incinerators Capable of Charging More than 250 Tons of Refuse per Day,
- Hydroflouric, Sulfuric and Nitric Acid Plants,
- Petroleum Refineries,
- Lime Plants,
- Phosphate Rock Processing Plants,
- Coke Oven Batteries,
- Sulfur Recovery Plants,
- Carbon Black Plants (furnace process),
- Primary Lead Smelters,
- Fuel Conversion Plants,
- Sintering Plants,
- Secondary Metal Production Plants,
- Chemical Process Plants,
- Fossil Fuel Boilers (or combinations thereof) Totaling More than 250 Million Btu/hour Heat Input,
- Petroleum Storage and Transfer Units with a Total Storage Capacity Exceeding 300,000 Barrels,
- Taconite Ore Processing Plants,
- Glass Fiber Processing Plants, and
- Charcoal Production Plants;

~~2.30.b.~~2.43.b. Notwithstanding the stationary source size specified in subdivision 2.43.a, any stationary source which emits or has the potential to emit, two hundred fifty (250) tons per year or more of any regulated ~~air~~ pollutant ~~and is not one of the stationary sources named in Table 1~~; or

~~2.30.c.~~2.43.c. ~~any~~ Any physical change at a stationary source, not otherwise qualifying under subdivision 2.43.a as a major stationary source, if the change itself would constitute a major stationary source.

2.43.d. The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source is listed in Table 1.

2.43.e. In addition to those facilities covered under subdivision 2.43.d, all coal preparation plants as defined under 40 CFR §60.251(a) which process more than 200 tons per day shall count fugitives from all "affected facilities" at the source, i.e., thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems.

2.43.f. For the purpose of this subsection, the term "affected facilities" means those facilities which are listed or identified as "affected facilities" in the applicable standard promulgated under §§111 or 112 of the CAA."

Table 1
~~STATIONARY SOURCES OF AIR POLLUTANTS~~ SOURCE CATEGORIES WHICH MUST INCLUDE FUGITIVE EMISSIONS

- Fossil-Fuel-Fired Steam Electric Plants Greater Than 250 Million Btu/Hour Heat Input
- Coal Cleaning Plants (with thermal dryers)
- Kraft Pulp Mills
- Portland Cement Plants
- Primary Zinc Smelters
- Iron and Steel Mill Plants
- Primary Aluminum Ore Reduction Plants
- Primary Copper Smelters
- Municipal Incinerators Capable of Charging Greater Than 250 Tons of Refuse/Day
- Hydrofluoric, Sulfuric, and Nitric Acid Plants
- Petroleum Refineries
- Lime Plants
- Phosphate Rock Processing Plants
- Coke Oven Batteries
- Sulfur Recovery Plants
- Carbon Black Plants (furnace process)
- Primary Lead Smelters
- Fuel Conversion Plants
- Sintering Plants
- Secondary Metal Production Plants
- Chemical Process Plants
- Fossil Fuel Boilers (or combinations thereof) Totaling More Than 250 Million Btu/Hour Heat Input
- Petroleum Storage and Transfer Units with a Total Storage Capacity Exceeding 300,000 Barrels
- Taconite Ore Processing Plants
- Glass Fiber Processing Plants
- Charcoal Production Plants
- Any other stationary source category which, as of August 7, 1980, is being regulated under §§111 or 112 of the CAA.

~~2.31.~~2.44. "Major stationary source for ozone" means a major stationary source of volatile organic compounds.

~~2.32. [Reserved.]~~

~~2.33.~~2.45. "Necessary preconstruction approvals or permits" means~~, for the purposes of this rule,~~ those permits or approvals required under ~~Federal air quality control laws and regulations~~ the CAA and ~~air quality control laws and~~ rules ~~of the State of West Virginia~~ promulgated under W.Va. Code §22-5-4.

~~2.34.~~2.46. "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount of emissions by which the sum of the following exceeds zero:

~~2.34.a.~~2.46.a. ~~Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and~~ The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to subsection 3.4;

~~2.34.b.~~2.46.b. Any other increases and decreases in actual emissions at the major source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under subdivision 2.46.b shall be determined as provided in subsection 2.8 of this section, except that paragraphs 2.8.a.3 and 2.8.b.4 shall not apply;

~~b.1.~~2.46.c. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs not more than five (5) years prior to the date on which construction on the particular change commences nor later than the date on which the increase from the particular change occurs.

~~b.2.~~2.46.d. An increase or decrease in actual emissions is creditable only if ~~the two following conditions are satisfied~~:

~~2.A.~~2.46.d.1. The increase or decrease in actual emissions has not been relied upon by the United States Environmental Protection Agency in issuing a permit pursuant to 40 CFR 52.21 or by the ~~Director~~ Secretary in issuing a permit pursuant to this rule and such permit is in effect on the date on which the increase in emissions from the particular change occurs~~:~~; and

2.46.d.2. The increase or decrease in emissions did not occur at a Clean Unit except as provided in subsections 22.8 and 23.10;

~~2.B.~~2.46.e. The increase or decrease in actual emissions of particulate matter, sulfur dioxide, or nitrogen oxides which occurred prior to the applicable minor source baseline date was required to be considered and calculated in determining the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM_{10} emissions can be used to evaluate the net emissions increase for PM_{10}~~.~~;

~~b.3.~~2.46.f. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level~~.~~;

~~b.4.~~2.46.g. A decrease in actual emissions is creditable only to the extent that:

~~4.A.~~2.46.g.1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

~~4.B.~~2.46.g.2. It is federally enforceable and is enforceable by the ~~Director~~ Secretary at and after the time that the actual construction on the particular change begins~~, and~~;

~~4.C.~~2.46.g.3. The decrease in actual emissions must have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change~~.~~;

2.46.g.4. The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under section 26, 40 CFR §52.21(y) or under regulations approved pursuant to or 40 CFR §51.165(d). Once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the designation

is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emission reductions that were not relied upon in a PCP excluded pursuant to section 27 of this section or for a Clean Unit designation are creditable to the extent they meet the requirements in subdivision 24.6.d for the PCP and subsections 22.8 and 23.10 for a Clean Unit.

~~b.5.~~2.46.h. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

~~2.35.~~2.47. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR 50 and designated in accordance with 40 CFR 53 or by an equivalent method designated in accordance with 40 CFR 53.

~~2.36.~~2.48. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in 40 CFR ~~Chapter I~~ 60, Appendix B, or by a test method specified in any rule of the Secretary which has been incorporated as part of the federally approved State Implementation Plan. All references to particulate or particulate matter in this rule shall mean particulate matter emissions.

~~2.37.~~2.49. "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state and all agencies or divisions thereof, any state political subdivision, the United States of America, any municipal, public, statutory; or private corporation or association organized or existing under the laws of this or any state or country, and any firm, partnership, or association of whatever nature.

2.50. "Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with subsections 25.1 through 25.15.

2.51. "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

2.52. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

2.53. "PAL major modification" means, notwithstanding subsections 2.40 and 2.46 (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

2.54. "PAL permit" means the major NSR permit, the minor NSR permit, or the State operating permit under a program that is approved into the State Implementation Plan, or the title V permit issued by the Secretary that establishes a PAL for a major stationary source.

2.55. "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

~~2.38. "Pollution control project" means any activity or project undertaken at an existing electric utility steam generating unit for purposes~~

~~of reducing emissions from such unit. Such activities or projects are limited to:~~

~~2.38.a. The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;~~

~~2.38.b. An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;~~

~~2.38.c. A permanent clean coal technology demonstration project conducted under Title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of Title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for USEPA.~~

~~2.38.d. A permanent clean coal technology demonstration project that constitutes a repowering project.~~

2.56. "Pollution control project (PCP)" means any activity, set of work practices or project (including pollution prevention as defined under subsection 3.36 undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in subdivisions 2.56.a through 2.56.f. are presumed to be environmentally beneficial pursuant to subdivision 24.2.a. Projects not listed in these paragraphs may qualify for a case-specific PCP exclusion pursuant to the requirements of subsections 24.2 and 24.5.

2.56.a. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2;

2.56.b. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;

2.56.c. Flue gas recirculation, low-NO_X burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for internal combustion (IC) engines), and oxidation/absorption catalyst for control of NO_X;

2.56.d. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this section, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide;

2.56.e. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:

2.56.e.1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a

higher sulfur content #2 fuel or from #6 fuel, to CA 0.05 percent sulfur #2 diesel);

2.56.e.2. Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;

2.56.e.3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;

2.56.e.4. Switching from coal to number 2 fuel oil (0.5 percent maximum sulfur content); and

2.56.e.5. Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content).

2.56.f. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the requirements of paragraphs 2.56.f.1 and 2.56.f.2.

2.56.f.1. The productive capacity of the equipment is not increased as a result of the activity or project.

2.56.f.2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, follow the procedure in subparagraph 2.56.f.2.A through 2.56.f.2.D.

2.56.f.2.A. Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B.

2.56.f.2.B. Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.

2.56.f.2.C. Calculate the projected ODP-weighted amount by multiplying the projected actual usage of the new substance by its ODP.

2.56.f.2.D. If the value calculated in subparagraph 2.56.f.2.D is more than the value calculated in subparagraph 2.56.f.2.C, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

2.57. "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

~~2.39.~~2.58. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source 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 only if the limitation or the effect it would have on emissions is federally enforceable or is enforceable by the ~~Director~~ Secretary in any permit and/or consent order issued by the United States Environmental Protection Agency or by the ~~Director~~ Secretary. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.59. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

2.60. "Prevention of Significant Deterioration (PSD) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan, or the program in 40 CFR §52.21. Any permit issued under such a program is a major new source review (NSR) permit.

2.61. [Reserved.]

2.62. "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

2.63. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

2.63.a. In determining the projected actual emissions under subsection 2.63 (before beginning actual construction), the owner or operator of the major stationary source:

2.63.a.1. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved State Implementation Plan; and

2.63.a.2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

2.63.a.3. Shall exclude, in calculating any increase in emissions that results from he particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subsection 2.8 and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

2.63.a.4. In lieu of using the method set out in paragraphs 2.63.a.1 through 2.63.a.3, may elect to use the emissions unit's potential to emit, in tons per year, as defined under subsection 2.58.

~~2.40.~~2.64. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

~~2.40.a.~~2.64.a. Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the ~~Director's~~ Secretary's emissions inventory at the time of enactment;

~~2.40.b.~~2.64.b. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than eighty-five (85) percent and a removal efficiency for particulates of no less than ninety-eight (98) percent;

~~2.40.c.~~2.64.c. Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

~~2.40.d.~~2.64.d. Is otherwise in compliance with the requirements of the ~~Clean Air Act~~ CAA.

2.65. [Reserved.]

~~2.41. "Regulated pollutant" or "Regulated air pollutant" means any pollutant regulated by the Clean Air Act or the West Virginia Air Pollution Control Law, codified at W. Va. Code §§22-5-1 et seq., and the rules promulgated thereunder, except as provided in paragraph 2.46.b., and the following pollutants:~~

~~- Carbon Monoxide~~
~~- Nitrogen Oxides~~
~~- Particulate Matter~~
~~- PM_{10}~~
~~- Sulfur Dioxide~~
~~- Ozone (volatile organic compounds)~~
~~- Lead~~
~~- Asbestos~~
~~- Beryllium~~
~~- Mercury~~
~~- Vinyl Chloride~~
~~- Fluorides~~
~~- Sulfuric Acid Mist~~
~~- Hydrogen Sulfide (H_2S)~~
~~- Total Reduced Sulfur Compounds (including H_2S)~~
~~- Reduced Sulfur Compounds (including H_2S)~~
~~- Municipal waste combustor organics (as total tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans~~
~~- Municipal waste combustor metals (as particulate matter)~~
~~- Municipal waste combustor acid gases (as the sum of SO_2 and HCl)~~

2.66. "Regulated NSR pollutant," for purposes of this rule, means the following:

2.66.a. Any pollutant for which a National Ambient Air Quality Standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds are precursors for ozone);

2.66.b. Any pollutant that is subject to any standard promulgated under section 111 of the CAA;

2.66.c. Any Class I or II substance subject to a standard promulgated under or established by title VI of the CAA; or

2.66.d. Any pollutant that otherwise is subject to regulation under the CAA; except that any or all hazardous air pollutants either listed in section 112 of the CAA or added to the list pursuant to section 112(b)(2) of the CAA, which have not been delisted pursuant to section 112(b)(3) of the CAA, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the CAA.

~~2.42.~~2.67. "Relocate" or "Relocation" means the physical movement of a source outside of its existing plant boundaries.

2.68. [Reserved.]

~~2.43.~~2.69. "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle,

magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

~~2.43.a.~~2.69.a. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

~~2.43.b.~~2.69.b. The ~~Director~~ Secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection ~~2.43.~~2.69 and is granted an extension under section 409 of the ~~Clean Air Act~~ CAA.

2.70. [Reserved.]

~~2.44.~~2.71. "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within ten (10) years after that change, where the ~~Director~~ Secretary determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the ~~Director~~ Secretary shall:

~~2.44.a.~~2.71.a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State or Federal regulatory authorities, and compliance plans under Title IV of the ~~Clean Air Act~~ CAA; and

~~2.44.b.~~2.71.b. Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

~~2.45.~~2.72. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major 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 major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, ~~or~~ from a train, or from a vessel.

2.73. "Secretary" means the Secretary of the Department of Environmental Protection as defined in W. Va. Code §§22-1-6 or 22-1-8.

~~2.46.~~2.74. "Significant" means:

~~2.46.a.~~2.74.a. in reference to a net emission increase or the potential of a source to emit any of the following pollutants, a rate of

emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon monoxide:	100 tons per year (TPY)
Nitrogen oxides:	40 TPY
Sulfur dioxide:	40 TPY
Particulate matter:	25 TPY
PM_{10}:	15 TPY
Ozone:	40 TPY of volatile organic compounds
Lead:	0.6 TPY
Fluorides:	3 TPY
Sulfuric acid mist:	7 TPY
Hydrogen sulfide (H_2S):	10 TPY
Total reduced sulfur (including H_2S):	10 TPY
Reduced sulfur compounds (including H_2S):	10 TPY
Municipal waste combustor organics (as total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans):	$3.5x10^{-6}$ TPY
Municipal waste combustor metals (as particulate matter):	15 TPY
Municipal waste combustor acid gases (as the sum of SO_2 and HCl):	40 TPY
Municipal solid waste landfill emissions (as nonmethane organic compounds):	50 TPY.

~~2.46.b.~~2.74.b. in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant ~~subject to a rule for which the Director has promulgated an emission or air quality standard~~ that is not listed in ~~paragraph 2.46.a.~~ subdivision 2.74.a, any emissions rate; ~~provided, however, the provisions of this rule shall not apply to pollutants listed pursuant to §112 of the federal Clean Air Act or to those pollutants regulated under 45CSR27 which are not otherwise regulated pursuant to paragraph 2.46.a.;~~ and

~~2.46.c.~~2.74.c. notwithstanding ~~paragraph 2.46.a.~~ subdivision 2.74.a, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten (10) kilometers of any Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (twenty-four (24) hour average).

2.75. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant (as defined in subsection 2.74) for that pollutant.

2.76. Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in subsection 2.74 or in the CAA, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in subsection 2.39.

~~2.47.~~2.77. "Significant impact" means an increase in the ambient air concentration for a particular pollutant as follows:

Pollutant:	Averaging time (hours)			
	Annual	24	8	3	1
SO_2		1.0 µg/m³	5.0 µg/m³		25.0 µg/m³
PM_{10}		1.0 µg/m³	5.0 µg/m³		
NO_2		1.0 µg/m³			
CO			0.5 mg/m³		2.0 mg/m³

2.78. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subsection 2.74 or in the CAA, whichever is lower.

~~2.48.~~2.79. "Source" or "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

~~2.49.~~2.80. "TSP" or "Total suspended particulate matter" means particulate matter as measured by the methods described in Appendix B of 40 CFR 50.

~~2.50.~~2.81. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plan and other requirements necessary to attain and maintain the ~~national ambient air quality standards~~ National Ambient Air Quality Standards during and after the project is terminated.

2.82. [Reserved.]

~~2.52.~~2.83. "US EPA" means the United States Environmental Protection Agency.

~~2.53. "Volatile organic compounds" excludes each of the following compounds, unless the compound is subject to an emission standard under section 111 of the Clean Air Act:~~

~~- Methane~~
~~- Ethane~~
~~- Methylene Chloride~~
~~- 1,1,1-Trichloroethane (Methyl Chloroform)~~
~~- Trichlorotrifluoroethane (CFC-113) (Freon 113)~~
~~- Trichlorofluoromethane (CFC-11)~~
~~- Dichlorodifluoromethane (CFC-12)~~
~~- Chlorodifluoromethane (CFC-22)~~
~~- Trifluoromethane (FC-23)~~
~~- Dichlorotetrafluoroethane (CFC-114)~~
~~- Chloropentafluoroethane (CFC-115)~~
~~- Dichlorotrifluoroethane (HCFC-123)~~
~~- 2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)~~
~~- Pentafluoroethane (HFC-125)~~
~~- 1,1,2,2-Tetrafluoroethane (HFC-134)~~
~~- Tetrafluoroethane (HFC-134a)~~
~~- Dichlorofluoroethane (HCFC-141b)~~
~~- Chlorodifluoroethane (HCFC-142b)~~
~~- 1,1,1-Trifluoroethane (HCFC-143a)~~
~~- 1,1-Difluoroethane (HFC-152a)~~
~~- Cyclic, branched, or linear, completely fluorinated alkanes~~
~~- Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations~~
~~- Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations~~
~~- Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine~~
~~- Any other compound excluded from the definition of VOC by USEPA and the Director.~~

2.84. "Volatile organic compounds (VOC)" is as defined in 40 CFR §51.100(s).

§45-14-3. Applicability.

3.1. The requirements of this rule apply to the construction of any new major stationary source (as defined in subsection 2.43) or any proposed

project at an existing major stationary source in an area designated as attainment or unclassifiable under§§ 107(d)(1)(A)(ii) or (iii) of the CAA.

3.2. The requirements of sections 7 through 13 and sections 17 through 19 apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule otherwise provides.

3.3. No new major stationary source or major modification to which the requirements of sections 7 through 13 and sections 17 through subsection 19.7 apply shall begin actual construction without a permit issued by the Secretary that states that the major stationary source or major modification will meet those requirements.

3.4. Determination of major modification. -- The determination as to whether a proposed project is a major modification for a regulated NSR pollutant shall be determined in accordance with the specific provisions set forth in subdivisions 3.4.a through 3.4.f.

3.4.a. Except as otherwise provided in subsections 3.5 and 3.6, and consistent with the definition of major modification contained in subsection 2.40, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases -- a significant emissions increase (as defined in subsection 2.75), and a significant net emissions increase (as defined in subsections 2.46 and 2.74). The proposed project is not a major modification if it does not cause a significant emissions increase. If the proposed project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

3.4.b. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3.4.c through 3.4.f. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in subsection 2.46. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3.4.c. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. -- A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in subsection 2.63) and the baseline actual emissions (as defined in subdivisions 2.8.a and 2.8.b), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74).

3.4.d. Actual-to-potential test for projects that only involve construction of a new emissions unit(s). -- A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in subsection 2.58) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in subdivision 2.8.c) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74).

3.4.e. Emission test for projects that involve Clean Units. -- For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.

3.4.f. Hybrid test for projects that involve multiple types of emissions units. -- A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3.4.c through 3.4.e as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in subsection 2.74). For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3.4.c for the existing unit and using the method specified in subdivision 3.4.e for the Clean Unit.

3.5. For any major stationary source subject to a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements set forth in section 25.

3.6. An owner or operator undertaking a PCP (as defined in subsection 2.56) shall comply with the requirements set forth in section 24.

~~§45-14-3.~~ §45-14-4. Ambient Air Quality Increments and Ceilings.

~~3.1.~~4.1. No increases in pollutant concentrations over the baseline concentrations are allowed in excess of those listed below.

Pollutant	Maximum Allowable Increase ($\mu g/m^3$)
Class I	
Particulate matter:	
PM_{10}, Annual geometric mean	4
PM_{10}, 24-hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM_{10}, Annual geometric mean	17
PM_{10}, 24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM_{10}, Annual geometric mean	34
PM_{10}, 24-hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

4.2. For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one location.

~~3.2.~~4.3. No pollutant concentration shall exceed any air quality standard promulgated:

~~3.2.a.~~4.3.a. by the ~~Director~~ Secretary; or

~~3.2.b.~~4.3.b. by the ~~United States Environmental Protection Agency~~ USEPA.

~~§45-14-4.~~ §45-14-5. Area Classification.

~~4.1.~~5.1. Dolly Sods Wilderness Area and Otter Creek Wilderness Area are designated as Class I Areas;

~~4.2.~~5.2. The Spruce Knob-Seneca Rocks National Recreational Area, the Cranberry National Wilderness, and the New River Gorge

National Scenic River are designated as Class II Areas; and

~~4.3.~~5.3. The remainder of the State of West Virginia is designated as a Class II Area.

~~§45-14-5.~~ §45-14-6. Prohibition of Dispersion Enhancement Techniques.

~~5.1.~~6.1. The use of stack heights which exceed good engineering practice or any dispersion techniques to reduce the concentration of any air pollutant and thereby, affect the degree of emission limitation required is prohibited unless a stack existed or dispersion technique was implemented before December 31, 1970.

~~§45-14-6.~~ §45-14-7. Registration, ~~Report~~ Reporting and Permit Requirements for Major Stationary Sources and Major Modifications.

~~6.1.~~7.1. No person shall cause, suffer, allow, or permit the construction or relocation of any major stationary source or a major modification to be commenced after the effective date of this rule in any area designated as attainment or unclassifiable under section 107 of the ~~Clean Air Act~~ CAA, without notifying the ~~Director~~ Secretary of such intent and obtaining prior to beginning actual construction, or modification (as defined by subsection ~~2.8~~ 2.10) a permit(s) to so construct, modify, or relocate the major stationary source or major modification as herein provided. If the area in which such source would be constructed or the area in which such modification would occur is designated as nonattainment under §107 of the ~~Clean Air Act~~ CAA, as amended, for any pollutant which the source or modification would emit in significant amounts (as defined by subsection ~~2.46~~ 45CSR19-2.65), the source or modification shall meet all requirements of 45CSR19 for that pollutant and shall not be subject to the requirements of this rule for that pollutant.

~~6.2.~~7.2. The owner or operator of the source shall file with the ~~Director~~ Secretary a timely and complete permit application containing sufficient information as, in the judgment of the ~~Director~~ Secretary, will enable the ~~Director~~ Secretary to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules promulgated by the ~~Director~~ Secretary in general and with the requirements of this rule. Such information may include, but not be limited to:

~~6.2.a.~~7.2.a. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

~~6.2.b.~~7.2.b. A detailed schedule for construction of the source or modification;

~~6.2.c.~~7.2.c. A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied;

~~6.2.d.~~7.2.d. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

~~6.2.e.~~7.2.e. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

~~6.3.~~7.3. Each permit application shall be signed by the owner or operator of the major stationary source or major modification, and such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, or relocation, and

operation of the major stationary source or major modification in accordance with applicable rules of the ~~Director~~ Secretary, the permit application, and any permit issued pursuant to this rule.

~~6.4.~~7.4. Within thirty (30) days of the receipt of a permit application for construction or relocation of a major stationary source or for a major modification, the ~~Director~~ Secretary shall determine if the application is complete or if there exists any deficiency in the application or information submitted, and shall notify the applicant of all such deficiencies, if any. In the event of such a deficiency, the date of receipt of the application shall be the date on which the ~~Director~~ Secretary received all required information.

~~6.5.~~7.5. Within six (6) months of the receipt of a complete permit application for construction or relocation of a major stationary source or for a major modification, the ~~Director~~ Secretary shall issue such a permit unless the ~~Director~~ Secretary determines that the proposed major stationary source or major modification has not satisfied the requirements of this rule, will violate applicable emission standards, will interfere with the attainment or maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this rule, in which case the ~~Director~~ Secretary shall issue an order for the prevention of such construction, modification, or relocation.

~~6.6.~~7.6. ~~When~~ If the ~~Director~~ Secretary denies a permit application for the proposed construction or relocation of any major stationary source or major modification, the order shall set forth the ~~Director's~~ Secretary's reasons with reasonable specificity.

~~6.7.~~7.7. The ~~Director~~ Secretary may impose any reasonable conditions as part of a granted construction, modification, or relocation permit. Such conditions may include, but not be limited to, the submission of periodic progress or operation reports, the provisions of a suitable sampling site, the installation of pollutant monitoring devices, and the operation and maintenance of ambient air quality monitoring stations.

~~§45-14-7.~~ §45-14-8. ~~Requirements Relating to~~ Control Technology Requirements.

~~7.1.~~8.1. Any person proposing to construct; or relocate a major stationary source or major modification shall meet each applicable emissions limitation promulgated by the ~~Director~~ Secretary and any applicable emissions standard or standard of performance under 40 CFR Parts 60, 61; and 63.

~~7.2.~~8.2. Any person proposing to construct a new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

~~7.3.~~8.3. Any person proposing a major modification of a stationary source shall apply best available control technology for each regulated NSR pollutant for which such proposed major modification would cause a significant net emissions increase from such source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

~~7.4.~~8.4. For any proposed construction of a major stationary source or major modification which is a phased construction project, the determination of best available control technology shall be reviewed and modified as appropriate at the last reasonable time which occurs no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required

to demonstrate the adequacy of any previous determination of best available control technology for the source.

~~§45-14-8.~~ §45-14-9. Requirements Relating to the Source's Impact on Air Quality.

~~8.1.~~9.1. Any person proposing to construct or relocate a major stationary source or to make a major modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emission increases or reductions (including secondary emissions) would not cause or contribute to air pollution in violation of:

~~8.1.a.~~9.1.a. Any National or West Virginia Ambient Air Quality Standard; or

~~8.1.b.~~9.1.b. Any applicable maximum allowable increase over the baseline concentration in any area.

~~8.2.~~9.2. A major source or major modification will be considered to cause or contribute to a violation of a ~~national ambient air quality standard~~ National Ambient Air Quality Standards when the ambient impact of the emissions from such source or modification would, at a minimum, exceed the significant impact levels defined in subsection ~~2.47~~ 2.63.

~~§45-14-9.~~ §45-14-10. ~~Requirements for~~ Air Quality ~~Models~~ Modeling Requirements.

~~9.10.~~10.1. All estimates of ambient concentrations required under section ~~8.~~9 shall be based on the applicable air quality models, data bases, and other requirements specified in the ~~"Guideline on Air Quality Models (Revised)" (1986) (EPA-450/2-78-027R), Supplement A (1987) and Supplement B (1993)~~. Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models).

~~9.2.~~10.2. Where an air quality impact model specified in ~~the "Guideline on Air Quality Models (Revised)" (1986), Supplement A (1987) and Supplement B (1993)~~ Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted, provided that said modification or substitution is approved in writing by the ~~United States Environmental Protection Agency~~ Administrator.

~~§45-14-10.~~ §45-14-11. ~~Requirements for~~ Air Quality Monitoring Requirements.

~~10.1.~~11.1. Any person proposing to construct or relocate a major stationary source shall provide an analysis of the ambient air quality in the area that the major stationary source would affect for each pollutant that it would have the potential to emit in a significant amount.

~~10.2.~~11.2. Any person proposing to make a major modification to a stationary source shall provide an analysis of the ambient air quality in the area that the major modification would affect for each pollutant for which it would result in a significant net emissions increase.

~~10.3.~~11.3. For those pollutants for which no National or West Virginia Ambient Air Quality Standards exists, the analysis shall contain such air quality monitoring data as the ~~Director~~ Secretary determines is necessary ~~for the Director~~ to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

~~10.4.~~11.4. For those pollutants (other than non-methane hydrocarbons) for which such an ambient air quality standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

~~10.5.~~11.5. All ambient air quality monitoring data that is required shall have been gathered over a period of one (1) year and shall represent the year preceding receipt of the application, except that, if the ~~Director~~ Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not to be less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

~~10.6.~~11.6. Any person proposing to construct or relocate a major stationary source or make a major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the ~~Director~~ Secretary determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

~~10.7.~~11.7. Operation of monitoring stations required by ~~this~~ section ~~10.~~11 shall meet the requirements of Appendix B of 40 CFR 58 during the operation of the monitoring stations.

~~§45-14-11.~~ §45-14-12. ~~Requirements for~~ Additional Impacts Analysis Requirements.

~~11.1.~~12.1. Any person proposing to construct or relocate a major stationary source or make a major modification shall provide:

~~11.1.a.~~12.1.a. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value; and

~~11.1.b.~~12.1.b. An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial; and other growth associated with the source or modification.

~~§45-14-12.~~ §45-14-13. Additional Requirements and Variances for Sources Impacting Federal Class I Areas.

~~12.1.~~13.1. Notice to EPA. -- The ~~Director~~ Secretary shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification impacting a Class I area and provide notice to the Administrator of every action related to the consideration of such permit.

13.2. Notice to Federal land managers. -- The Secretary shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager or the Federal official, charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area.

13.3. The Secretary shall also provide the Federal land manager or such Federal officials with a copy of the preliminary determination required under subsection 17.2, and shall make available to them any materials used in making that determination, promptly after the Secretary makes such determination. Finally, the Secretary shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

13.4. Federal Land Manager. The Federal Land Manager or the Federal official, charged with direct responsibility for management of such lands has an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Secretary, whether a proposed source or modification will have an adverse impact on such values.

~~12.2.~~13.5. The Federal Land Manager of the affected Class I area may present to the ~~Director~~ Secretary during the public review process described in section ~~16.~~ 17 a demonstration that the emissions from the proposed major stationary source or major modification would have an adverse impact on the air quality-related values (including visibility) of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the ~~Director~~ Secretary concurs with such demonstration, the ~~Director~~ Secretary shall deny the permit to construct.

13.6. Class I variances. -- The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal land manager concurs with such demonstration and he so certifies, the Secretary may issue the permit: Provided, That the applicable requirements of this section are otherwise met, to issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

Pollutant	Maximum Allowable Increase (micrograms per cubic meter)
Particulate Matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

~~12.3.~~13.7. An applicant for a permit pursuant to this rule shall be allowed the Class I variances as provided in 40 CFR §§51.166 (p) (4), (5), (6), and (7) as contained in the Code of Federal Regulations on July 1, 1994, provided, that all requirements of said 40 CFR §§51.166 (p) (4), (5), (6), and (7) are met and written notification of variance in accordance with said section(s) is provided to the ~~Director~~ Secretary.

~~§45-14-13.~~ §45-14-14. Procedures for Sources Employing Innovative Control Technology.

~~13.1.~~14.1. Any person proposing to construct or modify a major stationary source or major modification may petition the ~~Director~~ Secretary to approve a system of innovative control technology in lieu of best available control technology. Any such proposed innovative control technology shall meet the following conditions:

~~13.1.a.~~14.1.a. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

~~13.1.b.~~14.1.b. The proposed source or modification must achieve a level of continuous emissions reduction equivalent to that which would have been required under section ~~7.~~8 by a date specified by the ~~Director.~~ Secretary;

~~13.1.c.~~14.1.c. The source or modification would meet requirements equivalent to all requirements of this rule~~, based on the emissions rate~~ that a stationary source employing a system of best available control technology would be required to meet~~:~~;

~~13.1.d.~~14.1.d. Before the date specified in subsection ~~13~~14.4, the source or modification would ~~neither~~:

14.1.d.1. Not cause or contribute to any violation of an applicable National Ambient Air Quality Standard; ~~nor~~

14.1.d.2. Not impact any area where an applicable increment is known to be violated~~:~~;

14.1.d.3. Meet all other applicable requirements including those for public participation; and

~~13.1.e.~~14.1.e. The provisions of 40 CFR §51.166(p) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

~~13.2.~~14.2. The ~~Director~~ Secretary shall consult with the governor(s) of other state(s) and the Federal Land Manager(s) of areas impacted by the proposed source or modification.

~~13.3~~14.3. The ~~Director~~ Secretary, with the concurrence of the governor(s) of other state(s) and the Federal Land Manager(s), may make a determination that the source or modification would be employing innovative control technology.

~~13.4.~~14.4. The ~~Director~~ Secretary shall specify a date by which the source or modification must meet the requirements and conditions of subsection ~~13~~14.1. Such date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance.

~~13.5.~~14.5. The ~~Director~~ Secretary shall withdraw any approval to employ a system of innovative control technology made under this section ~~13~~14. if:

~~13.5.a.~~14.5.a. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

~~13.5.b.~~14.5.b. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

~~13.5.c.~~14.5.c. The ~~Director~~ Secretary decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

~~13.6.~~14.6. If the source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection ~~13.5.~~14.5, the ~~Director~~ Secretary shall specify a date by which the source or modification shall meet the requirement for the application of best available control technology through use of a demonstrated system of control. This date shall not exceed three (3) years from the date of the end of the specified time period or the date that the approval is withdrawn, whichever is earlier.

~~§45-14-14.~~ §45-14-15. Exclusions From Increment Consumption.

~~14.1.~~15.1. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

~~14.1.a.~~15.1.a. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation as of the effective date of this rule) over the emissions from such sources before the effective date of such an order;

~~14.1.b.~~15.1.b. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

~~14.1.c.~~15.1.c. Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; and

~~14.1.d.~~15.1.d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources so long as such exclusion ~~is approved by the Administrator of the United States Environmental Protection Agency.~~ meets the following requirements:

15.1.d.1. The temporary emissions increase of sulfur dioxide, particulate matter or nitrogen dioxides does not exceed two (2) years in duration;

15.1.d.2. The exclusion period for the temporary emissions increase is not renewable.; and

15.1.d.3. The exclusion allows no emissions increases from a stationary source which would:

15.1.d.3.A. Impact a Class I area or an area where an applicable increment is known to be violated; or

15.1.d.3.B. Cause or contribute to a violation of a National Ambient Air Quality Standard.

15.1.d.4. The exclusion requires limitations to be in effect at the end of the exclusion period specified in paragraph 15.1.d.1, which ensures that the emissions levels from stationary sources would not exceed those levels occurring from such sources before the temporary increase.

~~14.2.~~15.2. No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which ~~paragraph 14.1.a.~~subdivision 15.1.a. refers or the plan to which ~~paragraph 14.1.b.~~subdivision 15.1.b. refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

~~§45-14-15.~~ §45-14-16. ~~Exemptions From Specific Requirements of This Rule~~ Specific Exemptions.

~~15.1.~~16.1. A non-profit health or non-profit educational institution proposing to construct or relocate a major stationary source or to make a major modification may petition the ~~Director~~ Secretary for an exemption from the requirements

of subsections ~~7.2, 7.3, and 7.4~~ 8.2, 8.3 and 8.4 and sections ~~8, 10 and 11~~ 9, 11 and 12.

~~15.2.~~16.2. Any person proposing to construct, modify, or relocate a source which does not belong to any category listed in Table ~~2~~ 1 may exclude fugitive emissions, to the extent quantifiable, in the calculation of potential to emit.

~~15.3.~~16.3. Any person proposing to relocate a source or modification that is a portable stationary source which has previously received a permit under this rule may petition the ~~Director~~ Secretary for an exemption from the requirements of subsections ~~7.2, 7.3, and 7.4~~ 8.2, 8.3 and 8.4 and sections ~~8, 10 and 11~~ 9, 11 and 12. The ~~Director~~ Secretary shall grant this exemption if the following conditions are met:

~~15.3.a.~~16.3.a. The source proposes to relocate and emissions of the source at the new location would not exceed two (2) years; ~~and~~

~~15.3.b.~~16.3.b. The emissions from the source would not exceed its allowable emissions; ~~and~~

~~15.3.c.~~16.3.c. The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; ~~and~~

~~15.3.d.~~16.3.d. The source identifies the proposed new location and the probable duration of operation at the new location.; and

~~**Table 2:**~~
~~SOURCE CATEGORIES WHICH MUST INCLUDE FUGITIVE EMISSIONS~~

~~- Coal Cleaning Plants (with thermal dryers)~~
~~- Kraft Pulp Mills~~
~~- Portland Cement Plants~~
~~- Primary Zinc Smelters~~
~~- Iron and Steel Mills~~
~~- Primary Aluminum Ore Reduction Plants~~
~~- Primary Copper Smelters~~
~~- Municipal Incinerators Capable of Charging More Than 250 Tons of Refuse Per Day~~
~~- Hydrofluoric, Sulfuric, or Nitric Acid Plants~~
~~- Petroleum Refineries~~
~~- Lime Plants~~
~~- Phosphate Rock Processing Plants~~
~~- Coke Oven Batteries~~
~~- Sulfur Recovery Plants~~
~~- Carbon Black Plants (furnace process)~~
~~- Primary Lead Smelters~~
~~- Fuel Conversion Plants~~
~~- Sintering Plants~~
~~- Secondary Metal Production Plants~~
~~- Chemical Process Plants~~
~~- Fossil Fuel Boilers (or combination thereof) Totaling More Than 250 Million British Thermal Units Per Hour Heat Input~~
~~- Petroleum Storage and Transfer Units With a Total Storage Capacity Exceeding 300,000 Barrels~~
~~- Taconite Ore Processing Plants~~
~~- Glass Fiber Processing Plants~~
~~- Charcoal Production Plants~~
~~- Fossil-Fuel-Fired Steam Electric Plants of More Than 250 Million British Thermal Units Per Hour Heat Input~~
~~- Ammonium Sulfate Manufacturing Plants~~
~~- Asphalt Concrete Plants~~
~~- Asphalt Processing/Roofing Manufacturing Plants~~
~~- Bulk Gasoline Terminals~~
~~- Dry Cleaning Plants~~
~~- Glass Manufacturing Plants~~
~~- Grain Elevators~~
~~- Graphic Arts (Rotogravure) Plants~~
~~- Lead-Acid Battery Manufacturing Plants~~
~~- Mineral Processing Plants~~
~~- Natural Gas Processing Facilities~~
~~- Phosphate Fertilizer Production and Storage Facilities~~
~~- Residential Wood Heaters~~
~~- Rubber Tire Manufacturing Plants~~

~~- Sewage Treatment Plants~~
~~- Synthetic Fiber Production Plants~~
~~- Surface Coating and Printing Operations~~
~~- All Other Stationary Source Categories regulated by a standard promulgated under §111 or §112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category.~~

16.3.e. Such petition shall be submitted to the Secretary not less than ten (10) days in advance of the proposed relocation unless a different time duration is previously approved by the Secretary.

~~15.4.~~16.4. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the ~~Director~~ Secretary for an exemption from the requirements of sections ~~8.~~9 through ~~11.~~12 with respect to a particular pollutant and the ~~Director~~ Secretary shall grant such exemption, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would not exceed two (2) years, ~~and~~ would not impact ~~no~~ any Class I area and would not impact ~~no~~ any area where an applicable increment is known to be violated.

~~15.5~~16.5. Any person proposing to modify a major stationary source located in a Class II area that was in existence prior to March 1, 1978 ~~located in a Class II area~~ may petition the ~~Director~~ Secretary for an exemption from the requirements of sections ~~8., 10. and 11.~~ 9, 11 and 12 ~~with respect to a particular pollutant~~ as they relate to any maximum allowable increase for a Class II area. ~~and the Director~~ The Secretary shall grant such exemption, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than fifty (50) tons per year.

~~15.6.~~16.6. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the ~~Director~~ Secretary for an exemption from the requirements of section ~~10~~ 11with respect to a particular pollutant if:

~~15.6.a.~~16.6.a. The applicant demonstrates that the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, an air quality impact less than that listed in Table ~~3~~2; or

~~15.6.b.~~16.6.b. The applicant demonstrates that the existing concentrations of the pollutant in the area that the source or modification would affect are less than that listed in Table ~~3~~2; or

~~15.6.c.~~16.6.c. The applicant's request is for any pollutant which is not listed in Table ~~3~~2; or

~~15.6.d.~~16.6.d. With respect to ozone, the net increase of volatile organic compounds from the proposed source or modification will be less than one hundred (100) tons per year.

~~15.7.~~16.7. Any person proposing to construct or relocate a major stationary source or make a major modification to a source of volatile organic compounds may petition the ~~Director~~ Secretary for an exemption from the requirements of subsection ~~10.5~~ 11.5. that the continuous air monitoring data be representative of the year preceding the receipt of the application. The ~~Director~~ Secretary shall grant such an exemption if the proposed major stationary source or major modification for volatile organic compounds satisfies all conditions of 40 CFR Part 51, Appendix S, section IV.

Table ~~3~~2.
DE MINIMIS AIR QUALITY IMPACTS

- Carbon Monoxide - 575 $\mu g/m^3$, 8-hour average
- Nitrogen Dioxide - 14 $\mu g/m^3$, annual average
- PM_{10} - 10 $\mu g/m^3$, 24-hour average
- Sulfur Dioxide - 13 $\mu g/m^3$, 24-hour average
- Ozone - no minimum air quality value
- Lead - 0.1 $\mu g/m^3$, 3-month average
- ~~Mercury - 0.25 $\mu g/m^3$, 24-hour average~~
- ~~Beryllium - 0.001 $\mu g/m^3$, 24-hour average~~
- Fluorides - 0.25 $\mu g/m^3$, 24-hour average
- ~~Vinyl Chloride - 15 $\mu g/m^3$, 24-hour average~~
- Hydrogen Sulfide - 0.2 $\mu g/m^3$, 1-hour average
- Total Reduced Sulfur - 10 $\mu g/m^3$, 1-hour average
- Reduced Sulfur Compounds - 10 $\mu g/m^3$, 1-hour average

~~15.8.~~16.8. Any complete permit application pending final disposition by the ~~Director~~ Secretary on the effective date of this rule shall continue to be deemed complete with respect to the applicant's analysis under ~~subsection 8.1.b~~ subdivision 9.1.b concerning the maximum allowable increase for total suspended particulate matter which is applicable prior to the effective date of this rule.

~~§45-14-16.~~ §45-14-17. Public Review Procedures.

17.1. At the time that an application for a construction, modification or relocation permit is filed, the applicant shall place a Class I legal advertisement in a newspaper of general circulation in the area where the source will be located. No permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants proposed to 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.

~~16.1.~~ 17.2. After finishing the review of a complete application, the ~~Director~~ Secretary shall make a preliminary determination whether a permit should be approved, approved with conditions, or disapproved.

~~16.2.~~ 17.3. The ~~Director~~ Secretary shall make available in at least one location in the region in which the proposed source would be constructed a copy of all materials the applicant submitted (excluding data entitled to protection as confidential information under ~~the W. Va. Code and any rules pursuant thereto~~ 45CSR31), a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

~~16.3.~~ 17.4. The ~~Director~~ Secretary shall place a Class I legal advertisement in a paper of general circulation in the area where the proposed source would be constructed, modified, or relocated. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, the proposed start-up date, the preliminary determination, the degree of increment consumption that is expected from the source or modification, notification of the opportunity for written public comment, provisions for requesting a public meeting, details concerning the time and place of such a meeting if one is scheduled, and notification of the opportunity for comment at a public meeting if such meeting is to be conducted. A public comment period of thirty (30) days shall be provided and so stated in the advertisement.

~~16.4.~~ 17.5. The ~~Director~~ Secretary shall send a copy of the advertisement to the applicant, to ~~USEPA~~ the Administator, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other State or local air pollution control agencies, the chief executives of the city

and county where the source would be located; any comprehensive regional land use planning agency, any State, and any Federal Land Manager, whose lands may be affected by emissions from the source or modification.

~~16.5.~~ 17.6. The Secretary shall consider ~~Public~~ public comments submitted within thirty (30) days after the ~~Director's~~ Secretary's public notification of an opportunity for comment upon a proposed construction or relocation of a major stationary source or major modification, and comments submitted within a specified period not to exceed fifteen (15) days after any public meeting to receive comment on such proposed construction, modification, or relocation ~~shall be considered by the Director~~ before making a final decision on the approvability of the application. The ~~Director~~ Secretary shall make copies of all comments available for public inspection in the same locations where the ~~Director~~ Secretary made available preconstruction information relating to the proposed source or modification.

~~16.6.~~ 17.7. The ~~Director~~ Secretary shall make a final determination whether construction should be approved, approved with conditions, or disapproved.

~~16.7.~~ 17.8. The ~~Director~~ Secretary shall notify the applicant in writing of the final determination and make a copy of such notification available for public inspection at the same location where the ~~Director~~ Secretary made available preconstruction information and public comments relating to the proposed source or modification.

~~§45-14-17.~~ §45-14-18. Public Meetings.

~~17.1.~~18.1. Public meetings to receive comments on permit applications shall 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 proposed major source or major modification.

~~17.2.~~18.2. The ~~Director~~ Secretary or the ~~Director's~~ Secretary's designee shall preside over such meetings and ~~insure~~ ensure that all interested parties have ample opportunity to present comments. Such meetings shall be held at a convenient place as near as practicable to the location of the proposed major source or major modification.

~~17.3.~~18.3. At a reasonable time prior to such meetings, the ~~Director~~ Secretary shall provide appropriate information to news media in the area where the proposed source or modification is to be located.

~~§45-14-18.~~ §45-14-19. Permit Transfer, Cancellation, and Responsibility.

~~18.1.~~19.1. A permittee may petition the ~~Director~~ Secretary for a transfer of a permit previously issued in accordance with this rule. The ~~Director~~ Secretary shall approve such permit transfer provided the following conditions are met:

~~18.1.a.~~19.1.a. The permittee, in the petition, describes the reasons for the requested permit transfer and certifies that the subject source is in compliance with all the provisions and requirements of its permit, and

~~18.1.b.~~19.1.b. The transferee ~~acknowledges, in writing,~~ provides written acknowledgment that it accepts and will comply with all the requirements, terms, and conditions as contained in the subject permit.

~~18.2.~~19.2. The ~~Director~~ Secretary shall suspend or revoke a permit if, after eighteen (18) 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 such construction, modification, or relocation has commenced and remains ongoing. Such proof shall be provided not later than thirty (30) days after the ~~Director's~~ Secretary's request.

~~18.3.~~19.3. The ~~Director~~ Secretary may suspend, modify, or revoke the permit if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to. Upon notice of the Secretary's intent to suspend, modify or revoke a permit, the permittee may request a conference with the Secretary in accordance with the provisions of W.Va. Code § 22-5-5 to show cause why the permit should not be suspended, modified or revoked.

19.4. Any owner or operator who constructs, modifies or relocates any stationary source not in accordance with the application submitted pursuant to this rule or with the terms of any permit to construct, modify or relocate, or any owner or operator of a source subject to this rule who commences construction after the effective date of this rule without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

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

19.6. [Reserved.]

~~18.4.~~ 19.7. Any person who owns or operates any particular source or modification which becomes a major stationary source or major modification solely by virtue of a relaxation in any limitation, enforceable by the ~~United States Environmental Protection Agency~~ Administrator or the ~~Director~~ Secretary, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation), shall become subject to the requirements of this rule as though construction had not yet commenced on the source or modification.

19.8. The provisions of this subsection apply to proposed projects at an existing emissions unit at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a proposed project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method specified in paragraphs 2.63.a.1 through 2.63.a.3 for calculating projected actual emissions.

19.8.a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

19.8.a.1. A description of the proposed project;

19.8.a.2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the proposed project; and

19.8.a.3. A description of the applicability test used to determine that the proposed project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 2.63.a.2 and an explanation for why such amount was excluded, and any netting calculations, if applicable.

19.8.b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or

operator shall provide a copy of the information required under subdivision 19.8.a to the Secretary. Nothing in subdivision 19.8.b shall be construed to require the owner or operator of such a unit to obtain any determination from the Secretary before beginning actual construction.

19.8.c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 19.8.a.1. The owner or operator shall calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

19.8.d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Secretary within 60 days after the end of each year during which records must be generated under subdivision 19.8.c setting out the unit's annual emissions during the calendar year that preceded submission of the report.

19.8.e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Secretary if the annual emissions, in tons per year, from the project identified in subdivision 19.8.a, exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 19.8.a.3), by a significant amount (as defined in subsection 2.74) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 19.8.a.3. Such report shall be submitted to the Secretary within 60 days after the end of such year. The report shall contain the following:

19.8.e.1. The name, address and telephone number of the major stationary source;

19.8.e.2. The annual emissions as calculated pursuant to subdivision 19.8.c; and

19.8.e.3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

19.9. The owner or operator of the source shall make available the information required to be documented and maintained pursuant to subsection 19.8 for review upon a request for inspection by the Secretary or the general public pursuant to the requirements contained in 45CSR30.

~~§45-14-19.~~ §45-14-20. Disposition of Permits.

~~19.1.~~20.1. In the event that the ~~Director~~ Secretary promulgates changes to this rule or in the event of a redesignation of an attainment or non-attainment area (in accordance with ~~section~~ § 107 of the ~~Clean Air Act~~ CAA) prior to final disposition of a permit, the ~~Director~~ Secretary shall make final disposition of the permit application in accordance with such newly promulgated standards or redesignation.

~~§45-14-20.~~ §45-14-21. Conflict with Other Permitting Rules.

~~20.1.~~21.1. For sources ~~subject to the permitting requirements of~~ required to obtain a permit under this rule, the provisions of 45CSR13 ~~- "Permits for Construction, Modification, or Relocation of Stationary Sources of Air~~

~~Pollutants, and Procedures for Registration and Evaluation"~~ requiring a permit do not apply, so that only a single permit is required; provided, however, that:

21.1.a. ~~the~~ The base permit application fee of $1,000 ~~under paragraph 3.4.a of~~ pursuant to 45CSR22, subdivision 3.4.a shall apply to such sources in addition to other applicable fees:; and

21.1.b. Any permit issued under this rule includes conditions that ensure compliance with the provisions of 45CSR13 to the extent applicable to any regulated air pollutant (as defined in 45CSR13) not otherwise covered under this rule.

21.2. For sources that may be subject to 45CSR13, 45CSR14 and/or 45CSR19, the more stringent provisions of each applicable rule shall apply.

§45-14-22. Clean Unit Test for Emissions Units that are subject to BACT or LAER.

22.1. Applicability. -- The provisions of this section apply to any emissions unit for which the Secretary has issued a major NSR permit within the last 10 years.

22.2. General provisions for Clean Units. -- The provisions of subdivisions 22.2.a through 22.2.d shall apply to a Clean Unit.

22.2.a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection 22.4) and before the expiration date (as determined in accordance with subsection 22.5) will be considered to have occurred while the emissions unit was a Clean Unit.

22.2.b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision 22.6.d, the emissions unit shall remain a Clean Unit.

22.2.c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision 22.6.d, then the emissions unit shall lose its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit re-qualifies as a Clean Unit pursuant to subdivision 22.3.c. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

22.2.d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of subdivisions 3.4.a through 3.4.d and subdivision 3.4.f as if the emissions unit was never a Clean Unit.

22.3. Qualifying or re-qualifying to use the Clean Unit Applicability Test. -- An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 22.3.a and 22.3.b. After the original Clean Unit designation expires in accordance with subsection 22.5 or is lost pursuant to subdivision 22.2.c, such emissions unit may re-qualify as a Clean Unit under either subdivision 22.3.c, or under the Clean Unit provisions in section 23. To re-qualify as a Clean Unit under subdivision 22.3.c, the

emissions unit must obtain a new major NSR permit issued through the applicable NSR program and meet all the criteria in subdivision 22.3.c. The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

22.3.a. Permitting requirement. -- The emissions unit must have received a major NSR permit within the last 10 years. The owner or operator must maintain and be able to provide information that would demonstrate that this permitting requirement is met.

22.3.b. Qualifying air pollution control technologies. -- Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under subsection 2.56 or work practices, that meets both the following requirements in paragraphs 22.3.b.1 and 22.3.b.2.

22.3.b.1. The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for the Clean Unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

22.3.b.2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

22.3.c. Re-qualifying for the Clean Unit designation. -- The emissions unit must obtain a new major NSR permit that requires compliance with the current-day BACT (or LAER), and the emissions unit must meet the requirements set forth in subdivisions 22.3.a and 22.3.b.

22.4. Effective date of the Clean Unit designation. -- The effective date of an emissions unit's Clean Unit designation (the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification) is determined in accordance with subdivision 22.4.a or 22.4.b, as applicable.

22.4.a. Original Clean Unit designation, and emissions units that re-qualify as Clean Units by implementing new control technology to meet current-day BACT. -- The effective date is the date the emissions unit's air pollution control technology is placed into service, or 3 years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule.

22.4.b. Emissions units that re-qualify for the Clean Unit designation using an existing control technology. -- The effective date is the date the new, major NSR permit is issued.

22.5. Clean Unit expiration. -- An emissions unit's Clean Unit designation expires (that is, the date on which the owner or operator may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the applicable subdivision 22.5.a or 22.5.b.

22.5.a. Original Clean Unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day BACT. -- For any emissions unit that automatically qualifies as a Clean Unit under subdivision 22.3.a and 22.3.b or re-qualifies by

implementing new control technology to meet current-day BACT under subdivision 22.3.c, the Clean Unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subsection 22.7.

22.5.b. Emissions units that re-qualify for the Clean Unit designation using an existing control technology. -- For any emissions unit that re-qualifies as a Clean Unit under subdivision 22.3.c using an existing control technology, the Clean Unit designation expires 10 years after the effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subsection 22.7.

22.6. Required title V permit content for a Clean Unit. -- After the effective date of the Clean Unit designation, and in accordance with the provisions of 45CSR30, but no later than when the 45CSR30 permit is renewed, the 45CSR30 permit for the major stationary source must include the following terms and conditions in subdivision 22.6.a through 22.6.f related to the Clean Unit.

22.6.a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.

22.6.b. The effective date of the Clean Unit designation. -- If this date is not known when the Clean Unit designation is initially recorded in the title V permit (e.g., because the air pollution control technology is not yet in service), the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner or operator must notify the Secretary of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

22.6.c. The expiration date of the Clean Unit designation. -- If this date is not known when the Clean Unit designation is initially recorded into the title V permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner or operator must notify the Secretary of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

22.6.d. All emission limitations and work practice requirements adopted in conjunction with BACT, and any physical or operational characteristics which formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput).

22.6.e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation. (See subsection 22.7.)

22.6.f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection 22.7.

22.7. Maintaining the Clean Unit designation. -- To maintain the Clean Unit designation, the owner or operator must conform

to all the restrictions listed in subdivisions 22.7.a through 22.7.c . This subsection 22.7 applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

22.7.a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted in conjunction with the BACT that is recorded in the major NSR permit, and subsequently reflected in the title V permit. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput).

22.7.b. The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.

22.7.c. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

22.8. Netting at Clean Units. -- Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis"), unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

22.9. Effect of redesignation on the Clean Unit designation. -- The Clean Unit designation of an emissions unit is not affected by re-designation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must re-qualify under the requirements that are currently applicable in the area.

§45-14-23. Clean Unit Provisions for Emissions Units that Achieve an Emission Limitation Comparable to BACT.

23.1. Applicability. -- The provisions of this section apply to emissions units which do not qualify as Clean Units under section 22, but which are achieving a level of emissions control comparable to BACT, as determined by the Secretary.

23.2. General provisions for Clean Units. -- The provisions in subdivisions 23.2.a through 23.2.d apply to a Clean Unit designated under 45CSR14.

23.2.a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with subsection 23.5,

and before the expiration date, as determined in accordance with subsection 23.6, will be considered to have occurred while the emissions unit was a Clean Unit.

23.2.b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subsection 23.4, to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision 23.8.d, the emissions unit remains a Clean Unit.

23.2.c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection 23.4) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision 23.8.d, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to subdivision 23.3.d. of this section). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

23.2.d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of subdivisions 3.4.a through 3.4.d and subdivision 3.4.f as if the emissions unit is not a Clean Unit.

23.3. Qualifying or re-qualifying to use the Clean Unit applicability test. -- An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivision 23.3.a through 23.3.c. After the original Clean Unit designation expires in accordance with subsection 23.6 or is lost pursuant to subdivision 23.2.c, such emissions unit may re-qualify as a Clean Unit under either subdivision 23.3.d, or under the Clean Unit provisions in section 22. To re-qualify as a Clean Unit under subdivision 23.3.d, the emissions unit must obtain a new permit issued pursuant to the requirements in subsections 23.7 and 23.8 and meet all the criteria in subsection 23.3.d. The Secretary will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

23.3.a. Qualifying air pollution control technologies. -- Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology (which includes pollution prevention as defined under subsection 2.56 or work practices) that meets both the following requirements in paragraphs 23.3.a.1 and 23.3.a.2.

23.3.a.1. The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection 23.4. However, the emissions unit is not eligible for a Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the BACT determinations to which it is compared have resulted in a determination that no control measures are required).

23.3.a.2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention

technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

23.3.b. Impact of emissions from the unit. -- The Secretary must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

23.3.c. Date of installation. -- An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. However, for such emissions units, the owner or operator must apply for the Clean Unit designation within two (2) years after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. For technologies installed on and after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.

23.3.d. Re-qualifying as a Clean Unit. -- The emissions unit must obtain a new permit (pursuant to requirements in subsection 23.7 and 23.8) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit must meet the requirements in paragraph 23.3.a.1 and subdivision 23.3.b.

23.4. Demonstrating control effectiveness comparable to BACT. -- The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subdivision 23.3.a according to either subdivision 23.4.a or 23.4.b. Subdivision 23.4.c specifies the time for making this comparison.

23.4.a. Comparison to previous BACT and LAER determinations. -- The Secretary maintains an on-line data base of previous determinations of RACT, BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a BACT or LAER determination has been made within the preceding 5 years and entered into the RBLC, and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The Secretary shall also compare this presumption to any additional BACT or LAER determinations of which he or she is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

23.4.b. The substantially-as-effective test. -- The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection 23.7. The Secretary shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

23.4.c. Time of comparison.

23.4.c.1. Emissions units with control technologies that are installed before the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. -- The owner or operator of an emissions unit whose control technology is installed before the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in subsection 23.6.

23.4.c.2. Emissions units with control technologies that are installed on and after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule. -- The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

23.5. Effective date of the Clean Unit designation. -- The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection 23.7 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

23.6. Clean Unit expiration. -- If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, then the Clean Unit designation expires 10 years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires 10 years from the effective date of the Clean Unit designation, as determined according to subsection 23.5. In addition, for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subsection 23.9.

23.7. Procedures for designating emissions units as Clean Units. -- The Secretary shall designate an emissions unit a Clean Unit by issuing a permit pursuant to 45CSR13. Such permit must also meet the requirements in subsection 23.8.

23.8. Required permit content. -- The permit required by subsection 23.7 shall include the terms and conditions set forth in subdivisions 23.8.a through 23.8.f. Such terms and conditions shall be incorporated into the major stationary source's title V permit in accordance with the provisions 45CSR30, but no later than when the title V permit is renewed.

23.8.a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.

23.8.b. The effective date of the Clean Unit designation. -- If this date is not known when the Secretary issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner or operator must notify the Secretary of the exact date. This specific effective date must be added to the source's title V permit at the first

opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

23.8.c. The expiration date of the Clean Unit designation. If this date is not known when the Secretary issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit must describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner or operator must notify the Secretary of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.

23.8.d. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT (e.g., possibly the emissions unit's capacity or throughput).

23.8.e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation. (See subsection 23.9.)

23.8.f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection 23.9.

23.9. Maintaining a Clean Unit designation. -- To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in subdivisions 23.9.a through 23.9.e. This subsection applies independently to each pollutant for which the Secretary has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

23.9.a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

23.9.b. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT (e.g., possibly the emissions unit's capacity or throughput).

23.9.c. [Reserved]

23.9.d. The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.

23.9.e. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

23.10. Netting at Clean Units. -- Emissions changes that occur at a Clean Unit must not be included in calculating a significant net emissions increase (that is, must not be used in a "netting analysis") unless such use occurs before the effective date of EPA approval and promulgation

of a revision to the WV SIP incorporating this rule or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

23.11. Effect of redesignation on a Clean Unit designation. -- The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to subdivisions 22.2.c and 23.2.c, it must re-qualify under the requirements that are currently applicable.

§45-14-24. PCP Exclusion Procedural Requirements.

24.1. Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the Secretary if the project is listed in subdivisions 2.56.a through 2.56.f, or if the project is not listed in subdivisions 2.56.a through 2.56.f, then the owner or operator must submit a permit application and obtain approval to use the PCP exclusion from the Secretary consistent with the requirements in subsection 24.5. Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection 24.2, and the notice or permit application must contain the information required in subsection 24.3.

24.2. Any project that relies on the PCP exclusion must meet the requirements of subdivision 24.2.a and 24.2.b.

24.2.a. Environmentally beneficial analysis. -- The environmental benefit from the emissions reductions of pollutants regulated under the CAA must outweigh the environmental detriment of emissions increases in pollutants regulated under the CAA. A statement that a technology from subdivisions 2.56.a through 2.56.f is being used shall be presumed to satisfy this requirement.

24.2.b. Air quality analysis. -- The emissions increases from the project will not cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

24.3. Content of notice or permit application. -- In the notice or permit application sent to the Secretary, the owner or operator must include, at a minimum, the information listed in subdivisions 24.3.a through 24.3.e.

24.3.a. A description of the project.

24.3.b. The potential emissions increases and decreases of any pollutant regulated under the CAA and the projected emissions increases and decreases using the methodology in subsection 3.4, that will result from the project, and a copy of

the environmentally beneficial analysis required by subdivision 24.2.a.

24.3.c. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in 45CSR30.

24.3.d. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subdivisions 24.2.a and 24.2.b, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

24.3.e. Demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by subdivision 24.2.b. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.

24.4. Notice process for listed projects. -- For projects listed in subdivisions 2.56.a through 2.56.f, the owner or operator may begin actual construction of the project immediately after notice is sent to the Secretary (unless otherwise prohibited under requirements of the State Implementation Plan). The owner or operator shall respond to any requests by the Secretary for additional information that the Secretary determines is necessary to evaluate the suitability of the project for the PCP exclusion.

24.5. Permit process for unlisted projects. -- Before an owner or operator may begin actual construction of a PCP project that is not listed in subdivisions 2.56.a through 2.56.f, the project must be approved by the Secretary and recorded in a permit issued pursuant to 45CSR13, 45CSR19 or 45CSR30. This includes the requirement that the Secretary provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the Administrator to submit comments. The Secretary must address all material comments received by the end of the comment period before taking final action on the permit.

24.6. Operational requirements. -- Upon installation of the PCP, the owner or operator must comply with the requirements of subdivisions 24.6.a through 24.6.d.

24.6.a. General duty. -- The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subdivisions 24.2.a and 24.2.b, with information submitted in the notice or permit application required by subsection 24.3, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

24.6.b. Recordkeeping. -- The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision 24.6.a.

24.6.c. Permit requirements. -- The owner or operator must comply with any provisions in the State Implementation Plan-approved permit or title V permit related to use and approval of the PCP exclusion.

24.6.d. Generation of emission reduction credits. -- Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

§45-14-25. Actuals PALs.

25.1. Applicability.

25.1.a. The Secretary may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in subsections 25.1 through 25.15. The term "PAL" shall mean "actuals PAL" throughout section 25.

25.1.b. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in subsections 25.1 through 25.15, and complies with the PAL permit:

25.1.b.1. Is not a major modification for the PAL pollutant;

25.1.b.2. Does not have to be approved through the PSD program; and

25.1.b.3. Is not subject to the provisions in subsection 19.4 (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

25.1.c. Except as provided under paragraph 25.1.b.3, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

25.2. Definitions. -- For the purposes of this section 25, the definition in subdivision 25.2.a applies. When a term is not defined in these paragraphs, it shall have the meaning given in section 2 or in the CAA.

25.2.a. Allowable emissions means "allowable emissions" as defined in subsection 2.6, except as modified according to paragraph 25.2.a.1 and 25.2.a.2.

25.2.a.1. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

25.2.a.2. An emissions unit's potential to emit shall be determined using the definition in subsection 2.58, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

25.3. Permit application requirements. -- As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Secretary for approval:

25.3.a. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations, or work practices apply to each unit.

25.3.b. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

25.3.c. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision 25.13.a.

25.4. General requirements for establishing PALs.

25.4.a.The Secretary is allowed to establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraph 25.4.a.1 through 25.4.a.7 are met.

25.4.a.1. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

25.4.a.2. The PAL shall be established in a PAL permit that meets the public participation requirements in section 17.

25.4.a.3. The PAL permit shall contain all the requirements of subsection 25.7.

25.4.a.4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

25.4.a.5. Each PAL shall regulate emissions of only one pollutant.

25.4.a.6. Each PAL shall have a PAL effective period of 10 years.

25.4.a.7. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections 25.12 through 25.14 for each emissions unit under the PAL through the PAL effective period.

25.4.b. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets pursuant to 45CSR19 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

25.5. Public participation requirements for PALs. -- PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 45CSR13. This includes the requirement that the Secretary provide the public with notice of the proposed approval of a PAL permit and at least a

30-day period for submittal of public comment. The Secretary must address all material comments before taking final action on the permit.

25.6. Setting the 10-year actuals PAL level. -- The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in subsection 2.8) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subsection 2.74 or under the CAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The Secretary shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Secretary is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

25.7. Contents of the PAL permit. -- The PAL permit must contain, at a minimum, the information in subdivisions 25.7.a through 25.7.j.

25.7.a. The PAL pollutant and the applicable source-wide emission limitation in tons per year.

25.7.b. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

25.7.c. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subsection 25.10 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Secretary.

25.7.d. A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.

25.7.e. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection 25.9.

25.7.f. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision 25.13.a.

25.7.g. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subsection 25.12.

25.7.h. A requirement to retain the records required under subsection 25.13 on site. Such records may be retained in an electronic format.

25.7.i. A requirement to submit the reports required under subsection 25.14 by the required deadlines.

25.7.j. Any other requirements that the Secretary deems necessary to implement and enforce the PAL.

25.8. PAL effective period and reopening of the PAL permit. -- The requirements in subdivisions 25.8.a and 25.8.b apply to actuals PALs.

25.8.a. PAL effective period. -- The Secretary shall specify a PAL effective period of 10 years.

25.8.b. Reopening of the PAL permit.

25.8.b.1. During the PAL effective period, the Secretary must reopen the PAL permit to:

25.8.b.1.A. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

25.8.b.1.B. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets pursuant to 45CSR19; and

25.8.b.1.C. Revise the PAL to reflect an increase in the PAL as provided under subsection 25.11.

25.8.b.2. The Secretary shall have discretion to reopen the PAL permit for the following:

25.8.b.2.A. Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

25.8.b.2.B. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the State Implementation Plan; and

25.8.b.2.C. Reduce the PAL if the Secretary determines that a reduction is necessary to avoid causing or contributing to a National Ambient Air Quality Standard (NAAQS) or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

25.8.b.3. Except for the permit reopening in subparagraph 25.8.b.1.A for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection 25.5.

25.9. Expiration of a PAL. -- Any PAL that is not renewed in accordance with the procedures in subsection 25.10 shall expire at the end of the PAL effective period, and the requirements in subdivisions 25.9.a through 25.9.e shall apply.

25.9.a. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraph 25.9.a.1 and 25.9.a.2.

25.9.a.1. Within the time frame specified for PAL renewals in subdivision 25.10.b, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Secretary) by distributing the PAL allowable emissions for the major stationary

source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision 25.10.e, such distribution shall be made as if the PAL had been adjusted.

25.9.a.2. The Secretary shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Secretary determines is appropriate.

25.9.b. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Secretary may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

25.9.c. Until the Secretary issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under paragraph 25.9.a.2, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

25.9.d. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR requirements if such change meets the definition of major modification in subsection 2.40.

25.9.e. The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to subsection 19.4, but were eliminated by the PAL in accordance with the provisions in paragraph 25.1.b.3.

25.10. Renewal of a PAL. -- The Secretary shall follow the procedures specified in subsection 25.5 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Secretary.

25.10.a. Application deadline. -- A major stationary source owner or operator shall submit a timely application to the Secretary to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

25.10.b. Application requirements. -- The application to renew a PAL permit shall contain the information required in paragraphs 25.10.c.1 through 25.10.c.4.

25.10.b.1. The information required in subdivisions 25.3.a through 25.3.c.

25.10.b.2. A proposed PAL level.

25.10.b.3. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

25.10.b.4. Any other information the owner or operator wishes the Secretary to

consider in determining the appropriate level for renewing the PAL.

25.10.c. PAL adjustment. -- In determining whether and how to adjust the PAL, the Secretary shall consider the options outlined in paragraphs 25.10.d.1 and 25.10.d.2. However, in no case may any such adjustment fail to comply with paragraph 25.10.d.3.

25.10.c.1. If the emissions level calculated in accordance with subsection 25.6 is equal to or greater than 80 percent of the PAL level, the Secretary may renew the PAL at the same level without considering the factors set forth in paragraph 25.10.d.2; or

25.10.c.2. The Secretary may set the PAL at a level that he or she determines to be more representative of the source's baseline actual emissions, or that he or she determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Secretary in his or her written rationale.

25.10.c.3. Notwithstanding paragraphs 25.10.d.1 and 25.10.d.2:

25.10.c.3.A. If the potential to emit of the major stationary source is less than the PAL, the Secretary shall adjust the PAL to a level no greater than the potential to emit of the source; and

25.10.c.3.B. The Secretary shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection 25.11 (increasing a PAL).

25.10.d. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Secretary has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

25.11. Increasing a PAL during the PAL effective period.

25.11.a. The Secretary may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs 25.11.a.1 and 25.11.a.2.

25.11.a.1. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

25.11.a.2. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT

or LAER with which that emissions unit must currently comply.

25.11.a.3. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph 25.11.a.1, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

25.11.a.4. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

25.11.b. The Secretary shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph 25.11.a.2), plus the sum of the baseline actual emissions of the small emissions units.

25.11.c. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection 25.5.

25.12. Monitoring requirements for PALs.

25.12.a. General requirements.

25.12.a.1. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

25.12.a.2. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs 25.12.b.1 through 25.12.b.4 and must be approved by the Secretary.

25.12.a.3. Notwithstanding paragraph 25.12.a.2, you may also employ an alternative monitoring approach that meets paragraph 25.12.a.1 if approved by the Secretary.

25.12.a.4. Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

25.12.b. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 25.12.c through 25.12.l:

25.12.b.1. Mass balance calculations for activities using coatings or solvents;

25.12.b.2. CEMS;

25.12.b.3. CPMS or PEMS; and

25.12.b.4. Emission factors.

25.12.c. Mass balance calculations. -- An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

25.12.c.1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

25.12.c.2. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

25.12.c.3. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Secretary determines there is site-specific data or a site-specific monitoring program to support another content within the range.

25.12.d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

25.12.d.1. CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

25.12.d.2. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

25.12.e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

25.12.e.1. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

25.12.e.2. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Secretary, while the emissions unit is operating.

25.12.f. Emission factors. -- An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

25.12.f.1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

25.12.f.2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

25.12.f.3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Secretary determines that testing is not required.

25.12.g. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

25.12.h. Notwithstanding the requirements in subdivisions 25.12.c through 25.12.g, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of

the emissions unit, the Secretary shall, at the time of permit issuance:

25.12.h.1. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

25.12.h.2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

25.12.i. Re-validation. -- All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Secretary. Such testing must occur at least once every 5 years after issuance of the PAL.

25.13. Recordkeeping requirements.

25.13.a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of section 28 and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

25.13.b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

25.13.b.1. A copy of the PAL permit application and any applications for revisions to the PAL; and

25.13.b.2. Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

25.14. Reporting and notification requirements. -- The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Secretary in accordance with the applicable title V operating permit program. The reports shall meet the requirements in subdivisions 25.14.a through 25.14.c.

25.14.a. Semi-annual report. -- The semi-annual report shall be submitted to the Secretary within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs 25.14.a.1 through 25.14.a.7.

25.14.a.1. The identification of owner and operator and the permit number.

25.14.a.2. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision 25.13.a.

25.14.a.3. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

25.14.a.4. A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

25.14.a.5. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

25.14.a.6. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and

whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision 25.12.g.

25.14.a.7. A signed statement by the responsible official (as defined by the 45CSR30-2.38) certifying the truth, accuracy, and completeness of the information provided in the report.

25.14.b. Deviation report. -- The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 45CSR30-5.1.c.3 shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 45CSR30-5.1.c.3. The reports shall contain the following information:

25.14.b.1. The identification of owner and operator and the permit number;

25.14.b.2. The PAL requirement that experienced the deviation or that was exceeded;

25.14.b.3. Emissions resulting from the deviation or the exceedance; and

25.14.b.4. A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

25.14.c. Re-validation results. -- The owner or operator shall submit to the Secretary the results of any re-validation test or method within 3 months after completion of such test or method.

25.15. Transition requirements.

25.15.a. The Secretary may not issue a PAL that does not comply with the requirements in subsections 25.1 through 25.15 after the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule.

25.15.b. The Secretary may supersede any PAL that was established prior to the effective date of EPA approval and promulgation of a revision to the WV SIP incorporating this rule with a PAL that complies with the requirements of subsections 25.1 through 25.15.

§45-14-26. Inconsistency Between Rules.

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

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD

On Monday, August 2, 2004 beginning at 6 p.m., the West Virginia Department of Environmental Protection, Division of Air Quality will hold a public hearing on proposed revisions to existing legislative rules as follows:

45CSR14	Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD);
45CSR15	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61;
45CSR16	Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60;
45CSR19	Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment;
45CSR25	To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities; and
45CSR34	Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63.

Upon authorization and promulgation of revisions to 45CSR15, 45CSR16 and 45CSR34, the Division of Air Quality will provide the U.S. Environmental Protection Agency the updated final rules as part of West Virginia's program delegation of the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, which became effective January 8, 2002.

Upon authorization and promulgation of revisions to 45CSR14 and 45CSR19, the final rules will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan pursuant to the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

The public hearing will be held at the Department of Environmental Protection, Division of Air Quality's Conference Room A/B, 7012 MacCorkle Avenue, SE, Charleston and is open to the public. Written and oral comments will be accepted until the close of the hearing and will be made a part of the rulemaking record. Comments will also be accepted by fax (304-926-3637), US Mail, or e-mail if postmarked or delivered by the close of business on August 2, 2004. The scope of submitted comments must be limited to the proposed revisions of the rules. The public may submit written comments by mail or other delivery to the Division of Air Quality for inclusion in the rule-making record at the following address:

John A. Benedict, Director
Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

Copies of the proposed legislative rules will be available for public review on or before July 2, 2004 at the Division of Air Quality's Charleston office at the above address or electronically upon e-mail request to: tmowrer@wvdep.org. In addition, the proposed rules will be available online at www.wvdep.org by selecting "Offices - Division of Air Quality." Under the General Information heading, select "Public Notice and Comment."

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD

On Monday, August 2, 2004 beginning at 6 p.m., the West Virginia Department of Environmental Protection, Division of Air Quality will hold a public hearing on proposed revisions to existing legislative rules as follows:

45CSR14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD);

45CSR15 Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61;

45CSR16 Standards of Performance for New Stationary Sources Pursuant to 40 CFR Part 60;

45CSR19 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment;

45CSR25 To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities; and

45CSR34 Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63.

Upon authorization and promulgation of revisions to 45CSR15, 45CSR16 and 45CSR34, the Division of Air Quality will provide the U.S. Environmental Protection Agency the updated final rules as part of West Virginia's program delegation of the New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, which became effective January 8, 2002.

Upon authorization and promulgation of revisions to 45CSR14 and 45CSR19, the final rules will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan pursuant to the federal Clean Air Act.

Upon authorization and promulgation of revisions to 45CSR25, the rule will be submitted to the U.S. Environmental Protection Agency for approval as part of the State Hazardous Waste Management Program.

The public hearing will be held at the Department of Environmental Protection, Division of Air Quality's Conference Room A/B, 7012 MacCorkle Avenue, SE, Charleston and is open to the public. Written and oral comments will be accepted until the close of the hearing and will be made a part of the rulemaking record. Comments will also be accepted by fax (304-926-3637), US Mail, or e-mail if postmarked or delivered by the close of business on August 2, 2004. The scope of submitted comments must be limited to the proposed revisions of the rules. The public may submit written comments by mail or other delivery to the Division of Air Quality for inclusion in the rulemaking record at the following address:

John A. Benedict,
Director
Division of Air Quality
7012 MacCorkle Ave., SE
Charleston,
WV 25304-2943

Copies of the proposed legislative rules will be available for public review on or before July 2, 2004 at the Division of Air Quality's Charleston office at the above address or electronically upon e-mail request to: tmowrer@wvdep.org. In addition, the proposed rules will be available online at www.wvdep.org by selecting "Offices - Division of Air Quality." Under the General Information heading, select "Public Notice and Comment."

(116742)

CHARLESTON NEWSPAPERS
P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS

LEGAL ADVERTISING INVOICE

INVOICE DATE	07/02/04
ACCOUNT NBR	034320005
SALES REP ID	0020
INVOICE NBR	139791001

M

BILLED TO

WV DIVISION OF ENVIRONMENTAL
PROTECTION/AIR QUALITY
7012 MACCORKLE AVE SE
CHARLESTON WV 25304 USA

Please return this portion with your payment. AMOUNT PAID: _____

Make checks payable to: Charleston Newspapers

CHARLESTON NEWSPAPERS
P.O. Box 2993
Charleston, West Virginia 25330
Billing 348-4898
Classified 348-4848
1-800-WVA-NEWS
FEIN 55-0676079

INVOICE DATE	07/02/04
ACCOUNT NBR	034320005
SALES REP ID	0020
INVOICE NBR	139791001

Legal pricing is based upon 63 words per column inch.
Each successive insertion is discounted by 25% of the first insertion rate.
The Daily Mail is at a rate of $.13 per word, and the Charleston Gazette is at a rate of $.13 per word.

ISSUE DATE	AD TYPE	PUB	DESCRIPTION / REFERENCE NBR PURCHASE ORDER #	AD NUMBER	AD SIZE / TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
07/02	LEG	GZ	NOTICE OF PUBLIC HEA 139791001	0116742	1X1225 12.25	8.19	100.33	100.33
07/02	LEG	DM	NOTICE OF PUBLIC HEA 139791002		1X1225 12.25	8.19	100.33	100.33
			TOTAL INVOICE AMOUNT					200.66

State of West Virginia, **AFFIDAVIT OF PUBLICATION**

I, Sandra Legg of

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER,
THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,

published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the annexed notice of:

NOTICE OF PUBLIC HEARING

was duly published in said paper(s) during the dates listed below, and was posted at the front door of the court house of said Kanawha County, West Virginia, on the 3RD day of JULY 2004. Published during the following dates: 07/02/04-07/02/04

Subscribed and sworn to before me this 6 day of July

Printers fee $ 200.66

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LYNN R. FIELDEN
[illegible]
SCOTT DEPOT, WV 25560
My commission expires December 11, 2006

Lynn R. Fielden
Notary Public of Kanawha County, West Virginia

a
ental protection

Rule Hearings:
45CSR14, 45CSR15, 45CSR16,
45CSR19, 45CSR25, and 45CSR34
DEP - DAQ Conference Room
7012 MacCorkle Ave. SE, Charleston
August 2, 2004 6:00 p.m.

Sign-In

	ADDRESS	ORGANIZATION	PHONE/FAX	E-MAIL	COMMENT YES/NO
	P.O. Box 304 Letart 25267	Town of Leyland	(304) 854-1619		✓
	P.O. Box 156 Williamstown 26187	Ley	304 854-0493		✓
	SPILMAN THOMAS : BATTLE 300 KANAWHA BLVD CHARLESTON, WV 25321	SPILMAN THOMAS : BATTLE	304-720-3420 304-340-3801		
	Robinson + McElwee PLLC P.O. Box 1791 Charleston WV 25311	Robinson + McElwee + West Virginia Manufacturers Association	304-347-5344	acb@ramlaw.com	written only
	922 Quarrier St. Suite 308 Charleston, WV 25301	WV Environmental Council	304.543.5811	council@aol.com	✓
	1324 Virginia St East Chas. WV 25301		304-344-5050		~~written only~~
	5000 DOMINION BLVD GLEN ALLEN VA 23060	DOMINION	804 273 3012 FAX 3410	ROBERT_ASPLUND@dom.com	
	2231 McKinley Ave St. Albans WV 25177	Private Citizen of Concern @ Industry Uses	(304) 722-7289 722-1221	hbswee@aol.com NOT	NO
	7012 MacCorkle Ave SE Charleston WV 25304	WV DAQ	(304) 926-3647	lcrowder@wvdep.org	NO

ORIGINAL

BEFORE THE WEST VIRGINIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

In the matter of:

PUBLIC HEARING ON PROPOSED REVISIONS TO LEGISLATIVE RULE

45 CSR 14 "PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION FOR THE PREVENTION OF SIGNIFICANT DETERIORATION"

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 Department of Environmental Protection, Division of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:02 p.m., on the 2nd day of August, 2004, pursuant to notice.

MISSY L. YOUNG, C.C.R.
POST OFFICE BOX 1322
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-2300

P R O C E E D I N G S

MS. CHANDLER: This public hearing will now to order on this 2nd day of August, 2004 at the West Virginia Department of Environmental Protection, Division of Air Quality's conference room located at 7012 MacCorkle Avenue, Southeast, Charleston, West Virginia. This public hearing is being held to accept comments on proposed revisions to existing legislative rules 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration; 45CSR15 - Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61; 45CSR16 - Standards of Performance for New Stationary Sources Pursuant to 04 CFR Part 60; 45CSR19 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Causes or Contribute to Nonattainment; 45CSR25 - To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities; and 45CSR34 - Emission Standards for Hazardous Air Pollutants for Sources Categories Pursuant to 40 CFR Part 63.

A notice for the hearing was filed in the Secretary of State's Office on June 30, 2004 and noticed in the West Virginia Register on July 2, 2004. A class I

legal advertisement was published in both the Charleston Daily Mail and Charleston Gazette and the notice was posted on the Division of Air Quality's web site.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code.

My name is Jeanne Chandler with the Division of Air Quality, Department of Environmental Protection. And I will be the moderator for this proceeding this evening.

Each rule will be considered separately this evening. Comments and testimony will be accepted until the close of this hearing and will be made part of the rulemaking record. So we will take each rule one at a time, you can comment and then we will close that hearing and then we will move on. That's just so our transcript of each hearing will be separate.

The court reporter is Missy Young. If anyone desires a transcript of these proceedings, please contact Ms. Young at 984-2300.

The purpose of this hearing is to accept comments on proposed revisions to Rule 45CSR14, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.

This rule establishes a state construction permit program consistent with the federal Clean Air Act's Title I program and implementing regulations at 40 CFR§ 51.66, "Prevention of significant deterioration of air quality." 45CSR14 is part of the State Implementation Plan and sets forth the criteria and procedures for major stationary sources to obtain a permit to construct, operate and or modify a major stationary source.

Upon authorization and promulgation of revisions to 45CSR14, the final rules will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan pursuant to the federal Clean Air Act.

The floor is now open for public comment. Please identify yourself and affiliation, if any prior to making comments.

MS. CANTERBERRY: Shall I be the first one?

MS. CHANDLER: Do you have comments on rule 14?

MS CANTERBERRY: Well, I am really not to affiliated with all of this. The only thing I know is that this is the office of Air Quality and I know that the office Air Quality where I live has gone to zero.

What is being permitted up in our area is utterly ridiculous. As you know, I am from the town of Sylvester. I am here representing the town of Sylvester, West Virginia. We had a hearing just last week, the 22nd, with the office Air Quality over a remodification of the Elk Run Mining complex which will be releasing more dust in the air than what we all ready have.

I don't think we have stringent laws enough that is taking care of this, which I know a lot of our problem is the fact that Elk Run Mining does not abide by your laws. They tell you they are doing it, they are not doing it. I am here to see if we can't get some kind of law enacted that will protect the people. We have already watched our homes get depreciated 90 percent. We have lost our school and now our people are having big health problems, respiratory problems.

MS. CHANDLER: Ms. Canterberry, your comments need to be specific to this one rule, which is the Prevention of Significant Deterioration. I am not sure, but I don't think that your facility there, but your comments will certainly be considered. Tonight we are just trying to ask for your comments on the specific rules of things that we could change in that rule, as a whole, the specifics in the rule.

Your comments will certainly be considered.

MS. CANTERBERRY: Does Elk Run Mining complex come under this rule?

MS. CHANDLER: No, ma'am.

MS. CANTERBERRY: Well, then I don't have any need to say anything on that one. But I should be able to say something somewhere.

MS. CHANDLER: Is there any rule, are they a major sources?

MS. CROWDER: I don't know if they are a major sources or not.

MS. CHANDLER: Well, for this evening what we are looking at is comments on those particular things and I'm not sure Elk Run would fall under any of the rules that we are discussing this evening. We will certainly take your comments into consideration and it will be made part of the rule-making record since the Court Reporter had it on the transcript. We are looking really for specific things about the rules. I understand your comments.

MS. CANTERBERRY: What I have found out about the office of Air Quality, when it comes to a decision, they are not doing their job. The citizens have

been forgotten, not only in my area but in other areas too. I will listen but someone has to do something.

MS. CHANDLER: Okay. Is there any further comments on rule 14?

MS. RADCLIFF: I do. I am going to submit written comments. My name is Wendy Radcliff and I am with the Appalachian Center for the Economy and the Environment here in Charleston. My comments specifically are to 14 and portions of 19 because of 14. So, I hope I don't have to say it twice, but in my written comments it says both.

Specifically, the environmental community has three major concerns with changes that EPA made to 40CFR51.65 and 61.66 which was in December of 2002. This rule is implementing a lot of those changes that were proposed by the EPA at that time. Specifically, changes in the applicability provisions, the method of calculating baseline and future emissions and netting provisions will greatly expand the number of modifications to existing facilities that will escape NSR resulting in significant increases in air pollution.

Second, the special new source review exemptions encompassed in the pollution control project per unit, plant wise, applicability limits provisions are written, as they are written, will further expand the

number of modifications exempt from new source review and lock in historically high pollution levels for years into the future resulting in greater increases in air pollution.

Third, the lack of pre-construction notice, record keeping or reporting requirements in enforceability will greatly impede state efforts to insure compliance with the new source review program.

We urge the DAQ to recommend retaining West Virginia's NSR program in it's present form, as the current program provides significantly greater air quality protection than the December 2002, federal rule.

I would also like to point out that while we realize that there is a number of notices put out, the notices don't describe what the rules do. I would make the suggestion that what DEP should do in the future is to have some level of a summary. I know when it goes to legislative rule making there has to be a summary that explains what the rule does and whether or not it is coming to compliance with federal requirements or some summary that gives you and indication of what it is that this rule does.

I don't know about anyone else, but I paid to do this and I am a trained lawyer, but when I sat down

to go through this 30 days ago, I was astounded at the amount of information that we had to review to provide comments on. The way that EPA does it's rule-making currently, if you want to be involved in things other than just air quality, it is all in the same time period that you have to be preparing your comments. If you are interested in water or waste or mining, all those regs are out at the same time. I understand the legislative process and the need to be able to get these things out and get the hearings done before we over to the legislature, but at the same time a 30-day comment period on such a significant change is not enough.

I realize I may not be listened to on this, but I want to formally request that more time be given to these two major changes in regs 14 and reg 19 because they are going to have significant impact on West Virginia's air quality program. I believe that more time should be given. I think that we should have situation where people who are stakeholders or are concerned about this issue should be able to come in and have an opportunity to be able to comment. To be involved in the process and how to sell it.

I recognize a lot of these are incorporated by reference, EPA's rules, but there is

currently a challenge to these rules that EPA's has proposed that we are implementing. There is a question whether or not West Virginia can continue to have it's program as it is. I know that EPA argues that it would be an inferior program if we didn't adopt the flexablity that the NSF changes require. However, many of the environmental communities believe that it just makes our program stronger and therefore we are allows to have these different regulations than what EPA is proposing.

So, that is really all that I have to say. I have very specific, well, not very specific, specific comments written down as well that I would like to give you. I would like to request that these rules be put on hold and actually be given more consideration than just the 30 days for public comments that we have had.

MS. CHANDLER: Okay. Thank you, Ms. Radcliff. Is it okay for me to tell the Court Reporter that I would like your comments to be included in rule 19 as well?

MS. RADCLIFF: Sure. In rule 19 as well, that would be great, sure.

MS. CHANDLER: I will do that, rather than you repeat everything when we conclude this.

MS. RADCLIFF: For everyone else's benefit

as well.

MS. CHANDLER: Any other comments on rule 14?

MS. LEWIS: My name is Connie Greytopp Lewis. I am representing the West Virginia Environmental Council. I wish to start out by saying I do wish Stephanie Timmermyer was here this evening to participate and observe this hearing. I am also a veteran of a previous stakeholder process with the then office of Air Quality and for the most part, it was an excellent process. I do wish it had been used this year. Particularly with rules 14 and 19, because they are so significant. I believe that the process is diminished by not including the public early on. I also recognize that it is a burden on the staff but they have proven themselves up to the challenge in the past.

I have a few specific comments on 14, also they would apply to the same language in 19. So, again, I would ask that the reporter just copy that in.

We are particularly concerned about the baseline calculations. The part that I wish to call attention to is 2.8.82 regarding the average shall be adjusted downward to exclude noncompliant emissions. We believe that noncompliant emissions should be included in

calculating the average rate. That language is used several times in the proposed regulation.

We also have a question about the working in 2.66D. It appears to be less, I had trouble following the language given the number of punctuation marks and double negatives and triple negatives. I believe the language is designed to be unclear and that may be a deficiency in the federal regulations that you copied.

19.8.B3, relating to information provided by the owner or operator of a major source, as part of the annual report of emission, the report shall contain various and sundry things and then may include information provided by the owner or operator such as an explanation as to why the emission differ from the preconstruction projection. The operator should be required to provide an explanation as to why the emissions are different.

The final comment today, 21.4 relating to inconsistency, shall be resolved by the secretary and such determination shall be based upon the application of the more stringent provision et cetera. We request that that language should be changed so that the secretary shall implement upon the application of the more stringent provision terms et cetera.

I wish to say that I am rather sorry that

I was not able to put this all in writing.

MS. CHANDLER: Any further comments on 45CSR14? There being nothing further, this public hearing for the proposed 45CSR14 is concluded.

(WHEREUPON, the public hearing 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 4th day of August, 2004.

Missy L. Young, C.C.R.
Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

AppalachianCenter
FOR THE ECONOMY & THE ENVIRONMENT

Main Office:
P.O. Box 507
Lewisburg, W.V. 24901
ph: 304-645-9006
fax: 304-645-9008

Charleston Office:
1324 Virginia Street, E
Charleston, W.V. 25301
ph: 304-344-5050
e-mail: info@appalachian-center.org

www.appalachian-center.org

August 2, 2004

John Benedict, Director
Office of Air Quality, DEP
MacCorkle Avenue
Charleston WV

VIA HAND DELIVERY

Dear John:

Thank you for the opportunity to comment on the proposed changes to 45 CSR 14, and 45 CFR 19, Prevention of Significant Deterioration (PSD) program. These comments are offered on behalf of the Appalachian Center for the Economy and the Environment.

The environmental community has three major concerns with the changes EPA made to 40 CFR §§ 51.165 and 61.166 in its December 2002 rule: 1) changes in the applicability provisions, the methods for calculating baseline and future emissions, and netting provisions will greatly expand the number of modifications to existing facilities that will escape NSR, resulting in significant increases in air pollution; 2) the special NSR exemptions encompassed in the Pollution Control Project, Clean Unit, and Plantwide Applicability Limits provisions as written will further expand the number of modifications exempt from NSR and lock in historically high pollution levels for years into the future, resulting in even greater increases in air pollution; and 3) the lack of preconstruction notice, record-keeping and reporting requirements, and enforceability will greatly impede state efforts to ensure compliance with the NSR program. We urge DAQ to recommend retaining West Virginia's NSR program in its present form, as the current program provides significantly greater air quality protection than the December 2002 federal rule.

In the alternative, we would urge the Division of Air Quality to revise its proposed amendments so as to address the concerns listed above before presenting a proposed rule to the legislature. At this time we would also request an additional 30-days to comment on the proposed changes to this rule. The proposed changes are significant. Thirty days is an inadequate time to evaluate the impact on West Virginia's program and future air quality. Also, we would like to request that the DAQ be more explicit in its announcements of rule changes. A mere listing of the rules to be changed does not offer the public a good sense of the impetus of the change or the rationale behind the decision.

It appears from several cross references in the current draft proposed rule that DAQ intends to incorporate in West Virginia's program all of the changes contained in the December 2002 rule.

Applicability

The December 2002 federal rule adds a new § 51.166(a)(7) setting out the applicability criteria for PSD. The DAQ draft rule requires major stationary sources to comply with the requirements of this section but makes no changes to the section. Many of our concerns with § 51.166(a)(7) of the federal rule are discussed below in the context of the definitions for Major Stationary Source, Baseline Actual Emissions, Projected Actual Emissions, and Netting. To the degree changes are made in these definitions, similar changes may be required in the state regulatory language that incorporates § 51.166(a)(7) of the federal rule. In addition, we offer the following comments on other aspects of this section.

1) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units (51.166(a)(7)(c)).*

This change marks a significant shift from the actual-to-potential test for non-EGU sources in the current rule. A strong advantage of the actual-to-potential test is that it gives sources wishing to avoid NSR the option of accepting enforceable emission limits in their permits at levels below the NSR significance threshold. A major concern with the December 2002 federal rule is that it does not provide a similar enforcement mechanism when sources rely on projected actual emissions to avoid NSR.

2) *Hybrid test for projects that involve multiple types of emissions units (51.166(a)(7)(f)).*

The hybrid emissions test, § 51.166(a)(7)(f), provides that if a modification involves existing units and Clean Units, only resulting emission increases at existing units are counted in calculating projected actual emissions. Resulting increases at Clean Units are ignored. If the total emissions increases resulting from a project involving existing and Clean Units would trigger NSR, but would not trigger NSR if increases at Clean Units were treated as zero, the effect of this hybrid test would be to exempt existing units from BACT not because they have met the Clean Unit requirements, but because they are paired with a Clean Unit as part of a modification.

The West Virginia program should eliminate the hybrid test. Projects involving existing units should be required to consider all resulting emissions increases in calculating projected annual emissions, regardless of whether those increases occur at an existing or Clean Unit. Language can be added to the Clean Unit provisions providing that the BACT analysis that qualified an existing unit as a Clean Unit satisfies the BACT requirement for that unit if a hybrid project triggers NSR.

Definitions

1) *Major modification (51.166(b)(2)(i)).*

The definition for "Major modification" is incorporated by reference in the proposed rule. That definition requires a physical change to result in a significant emissions increase and a significant net emissions increase in order to trigger NSR. In other words, if a physical change

results in a significant emissions increase, a source can still take advantage of the netting provisions to "net out" of NSR. However, if a physical change does not result in a significant emissions increase, but netting calculations would result in a significant net emissions increase, the source would not be required to "net in" to NSR.

For the reasons discussed below, we urge DAQ to eliminate netting from West Virginia's NSR program. This will require defining major modification only as a physical change that results in a significant emissions increase. If netting is allowed, however, it should work to require a source to "net in" to NSR as well as allowing it to "net out." This can be accomplished by defining major modification only as a physical change that results in a significant net emissions increase.

2) *Baseline actual emissions (51.166(b)(47)*

The following should be included in the West Virginia definition of baseline actual emissions. These changes are not part of the federal definition:

- Do not allow emissions from malfunctions to be included in baseline calculations
- Clarify that utilities must adjust average rates during the 24-month baseline period downward to account for emissions standards implemented since the baseline period
- Do not exclude from the downward adjustment of baseline emissions any emissions limitation that is part of a maximum achievable control technology standard
- Require that the look-back period for calculating baseline emissions run from the date of the permit application rather than the date construction begins on a modification
- Adhere to a two-in-five look-back period for electric generating units (EGUs) and do not provide DAQ with the discretion to select a different 24-month period outside the five-year look-back
- Require the retention of all information used to establish baseline actual emissions for ten years following the date the permit issues.

These changes should be included in West Virginia's definition of baseline actual emissions.

In addition to the changes contained in the proposed rule, several other changes to the federal definition of baseline actual emissions should be made to prevent sources from relying on baseline emissions that are artificially high and not representative of current operations to avoid NSR. These include:

A. *Apply the same five-year look-back period to EGUs and non-EGUs.*

The draft rule allows non-EGU sources to look-back ten years in order to select the consecutive 24-month period they wish to rely on to establish baseline actual emissions. In order to make an accurate determination of whether a change to a source results in a significant emissions increase, the period of operation used to establish baseline emissions must be representative of the source's current operations. A source should not be allowed to reach back to an unrepresentative period in order to inflate baseline emissions above current operations.

A ten-year look-back period is too long to carry the presumption that historical emissions are an accurate representation of current operations. We urge DAQ to apply the same five-year look-back period to all sources subject to NSR in its proposed rule.

B. *Do not allow different baseline periods for different regulated pollutants.*

For projects involving multiple emissions units, the draft rule requires sources to use the same consecutive 24-month period to establish baseline emissions for all emissions units involved, but allows sources to select different 24-month periods for each regulated pollutant. In addition to greatly complicating the program and increasing the resources required to evaluate permit applications, this provision runs counter to the purpose of allowing sources to look back in time to select a baseline emissions period rather than relying on the 24-month period immediately preceding the change. That is, the look-back provision recognizes that emission levels are affected by business cycles and allows sources to select a 24-month period, within reason, that reflects the peak in a normal business cycle. Allowing different baseline periods for different pollutants permits a source to cherry-pick the highest 2-year period of emissions for each pollutant influenced by factors, such as the type of fuel being used, that have nothing to do with a normal business cycle. We urge DAQ to require sources to use the same 24-month baseline emissions period for all affected emissions units and all pollutants.

Projected Actual Emissions

- Require sources intending to rely on projected actual calculations to avoid NSR to apply for an amendment to its Title V permit to make the projected actual emissions an emissions limit in the permit, and do not permit construction until revised permit issued.

- Changes needed:

- Do not allow sources to exclude emissions it attributes to demand growth from the calculation of projected actual emissions. When EPA proposed adoption of an actual-to-projected-actual test for non-EGUs, it proposed to eliminate the demand growth exclusion from projected actuals for EGUs and non-EGUs. 63 Fed. Reg. At 39861 (July24, 1998). EPA found that "the demand growth exclusion is problematic because it is self-implementing and self-policing," and noted that

> in a market economy, sources often make physical changes in order to respond to market forces and, consequently, there is no plausible distinction between emissions increases due solely to demand growth as an independent factor and those changes at a source that respond to, or create new, demand growth, which then result in increased capacity utilization.

Id. There is no plausible way to distinguish emissions increases solely attributable to demand growth from emissions increases due to a physical change at an emissions unit. The inclusion of a demand growth exclusion in the method for calculating projected actual emissions creates a major loophole in the NSR program that will allow sources both to under-predict future emissions and to avoid enforcement for exceeding projected actual permit limits by attributing

the exceedence to demand growth. For these reasons, the demand growth exclusion should be eliminated from West Virginia's NSR program for all sources.

If a demand growth exclusion is retained in the proposed rule, the rule should be further changed to specify the record keeping and reporting requirements required to verify emissions increases are due solely to demand growth. Any information relied on to justify a demand growth exclusion must be in the public domain and open to public inspection.

Netting

The rule should eliminate netting altogether. If netting retained, rule should allow only one baseline period to be used for netting purposes for projects involving multiple units and multiple pollutants. Also, look-back period for netting purposes should be shortened to three years to make it more contemporaneous with project, and should specify that contemporaneous period ends when construction on the project is complete.

Replacement Units

The federal rule is unclear whether replacement units treated as new or existing units. EPA said on reconsideration that replacement units should be treated as existing units. West Virginia rule should say that replacement units are treated as new units. This means there should be a zero emissions baseline.

Pollution Control Projects

The purpose of PCP must be to reduce air emissions and creates rebuttable presumption that projects listed in rule are PCPs.

The Federal rule 51.166(v) requires sources to secure permit prior to constructing PCP if not one of projects listed in rule, but requires only notice of listed project prior to commencing construction. West Virginia should require approval that the listed project is PCP prior to commencing construction.

Clean Unit

West Virginia should require that to qualify as a clean unit, emissions unit must have received a major NSR permit within last five years, compared to ten years in federal rule.

There is an option in fed rule that allows sources to qualify as clean unit based on showing that emissions controls on unit are comparable or substantially as effective as BACT. This option should be eliminated. Sources should not be allowed to qualify as clean unit other than through BACT/LAER determination. Although determination would be made outside PSD/nonattainment process, it would be conducted in same manner. BACT/LAER determination can be made upon application of unit or in conjunction with issuance of Title V permit.

Clean Unit status should last no more than five years after the date it qualifies as a Clean Unit (i.e. date of BACT/LAER determination). This represents outside limit of reasonable time period for assuming BACT/LAER determination would not change significantly, given rapid evolution of control technology.

If a Clean Unit located in area that was in attainment at time of Clean Unit designation, and area subsequently designated nonattainment, designation should expire unless source demonstrates facility meets LAER.

Plantwide Applicability Limits

PAL baseline should be contemporaneous with creation of PAL to ensure reliance on current data and avoid grandfathering of historic high emission levels. This should be two consecutive years prior to PAL application. If DAQ wants to retain discretion to select alternate period to reflect highest production rates, this discretion should not reach back beyond five years. If an alternate baseline period is allowed, for emission units not in operation during PAL baseline period, the baseline emissions should be actual emissions for two years immediately preceding PAL application. If unit does not have two-year emissions history, baseline emissions should be zero. As with other baseline provisions, single baseline should be used for all pollutants.

- any new unit constructed under a PAL should be required to install BACT

- If a source has taken a synthetic minor emissions level to avoid NSR for any emissions unit and a PAL is subsequently established covering such units, source must continue to comply with synthetic minor limits. Such limits can be removed only if BACT is installed on the unit.

- PAL limit can be increased during term of PAL only if sum of emissions from small units, plus emissions from major units assuming BACT, plus emissions from all allowable new units, exceeds existing limit. Emissions for major units should be determined by conducting new BACT analysis, regardless of when any previous BACT analysis was performed.

- If PAL renewal sought, PAL should be renewed at existing PAL level only if it is lower than the PAL baseline emissions in the two years immediately preceding the renewal application plus the significant level(s) for the PAL pollutant(s).

Class I areas and role of Federal Land Managers

The role of the Federal Land Manager (FLM) should be significant in review PSD permits. Notification should be given to the FLM as early in the process as possible. Because the FLM is monitoring the impacts to the areas of special concern in our country and state, they should be afforded greater opportunity to be involved in the permit review process from the beginning.

Thank you for the opportunity to offer these comments. We look forward to continuing to work with you and others at DAQ to strengthen West Virginia's air program.

Sincerely,

Wendy E. Radcliff
Philip M. Stern Equal Justice Works Fellow

SIERRA CLUB

WEST VIRGINIA CHAPTER

P. O. Box 4142
Morgantown, WV 26504

Aug. 2, 2004

Comments Of West Virginia Chapter of Sierra Club regarding proposed changes to 45-CSR-14: "PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION FOR THE PREVENTION OF SIGNIFICANT DETERIORATION"

1. We oppose the use of Plant-wide Applicability Limits (PALs) and recommend that all changes relating to these be deleted. This includes amendments to sections 2.1, 2.2, 2.8, 2.39, 2.40, 2.40.i, 2.40.l, 2.46.b, 2.50-2.55, 2.75, 2.76, 2.78, and sections 22-25.

We also oppose the provisions in Sections 22-25. The use of the Clean Unit designation, Plant-wide Applicability limits, and Pollution Control Projects, while these may or may not be laudable in their intent, represent substantial policy issues (and backsliding on rule stringency) that should be addressed through legislation rather than rule-making. In particular, the concept of PALs has been debated in the Legislature repeatedly, and has been rejected more than once. It is inappropriate for the DEP to now give to industry through rule-making what they could not get through legislation.

The distinction between a "Significant emissions increase" and a "Significant net emissions increase" appears to be either strictly semantics (and very confusing at that), or is an attempt to provide an exemption for a wide range of major modifications in a manner not intended by the Legislature.

2. We recommend deleting all but the first sentence of section 2.4 (Adverse Impact on Visibility). Making "the determination on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility" will needlessly complicate the determination for WV-DEP and does nothing to improve air quality-related values. For example, DAQ has no expertise and no methodology for predicting the "times of visitor use of the Federal Class I Area", so any attempt to limit a determination of adverse impact on visibility appears to be an arbitrary and capricious attempt to actually allow such an adverse impact. Sierra Club members use Wilderness Areas and National Parks at all times of the year and every hour of the day and in all kinds of weather. Enjoyment of the spectacular views at Dolly Sods or Otter Creek are essential to this activity and is a Congressionally protected use, as specified in their designation as Class I Areas.

3. Should DEP choose to retain PALs, (contrary to our recommendation I #1 above), we recommend that, in setting a baseline (section 2.8), no distinction for electric generating facilities versus other facilities be made. There is no apparent justification for needlessly complicating the rules or for providing a separate set of rules for one industry sector versus another.

Furthermore, the baseline date should be set at the consecutive 24 month period within the previous five years "demonstrated to the satisfaction of the Secretary" to be representative of the facilities emissions. (Delete the words "selected by the owner or operator"). DEP MUST NOT defer its enforcement responsibilities to the regulated facilities by letting them pick whatever 24-month period they choose, even if it is no longer representative of the facilities baseline emissions. As such, there is simply no good reason to allow a facility to go back 10 years to choose a baseline, thus a five-year window should be more than adequate.

4. Section 2.12 defines BACT using terminology that is inconsistent with the Clean Air Act. The end of the last sentence reads: "including fuel cleaning or treatment or *innovative fuel combination techniques* for control of such pollutant." The correct language in the Clean Air Act refers to "innovative fuel combustion technologies". The term "fuel combination techniques" appears to be either a misprint, or is a deliberate attempt to limit the application of BACT, as there does not appear to be any legal or technical meaning to the term. Since this issue was raised repeatedly in comments during the air permit for the Longview power plant, it is not clear why this was not corrected in the current revisions. We strongly recommend that the definition of BACT be corrected to incorporate the language in the Clean Air Act.

5. Section 13.6. Class I variances. The proposed variance procedure does not have safeguards to adequately protect Class I Areas and their Air Quality Related Values. The allowable increase in SO2 deposition, for example, will lead to considerable damage to forest soils and streams impacted by acid deposition, as these soils and streams are already suffering significant degradation. The variance procedure should be eliminated because it does not provide for an improvement in air quality and a net reduction in acid deposition to vulnerable sites. Similar provisions are needed to assure that ozone damage to forest trees and other vegetation is reduced. The rule should be revised to state specifically that permits that propose emissions in excess of PSD increments must be denied.

6. Section 15.1.d. provides for "temporary" exceedances of allowable increments for periods not to exceed two years. This provision in essence allows polluters to break the law for two years and amounts to a "get out of jail free" card. We oppose any exemption for violations of emissions limits.

7. Section 17 still does not contain clear guidance on how DEP will respond to substantive public comment. This has become an increasingly embarrassing problem for DEP, as the response to comments is negligible, and has degenerated into a rote denial of any substantive public comment, without regard to the merit or consequences of the comments. We recommend that an additional section be added to require that, before a final determination, DEP be required to issue responses to any substantive comments, which shall include either a clear explanation of how the comments were incorporated into the final permit, or a rebuttable explanation of why no further response is required.

The current response to comments procedure has created a huge reservoir of ill will because of the profound perception that DEP either does not care to hear from the public, regards public comment as a nuisance, or simply ignores all public comments. The perception is clear that DEP makes much more significant efforts to address concerns from permit applicants than from the public for whom DEP is supposedly working. A valid response to comments procedure would go a long way to resolving this concern and repairing the crisis of confidence between the public and DEP.

8. The monitoring and enforcement procedures for the PALs are almost certainly inadequate. The very complexity of the rules is an indication and an admission by DEP of how

difficult it will be to monitor emissions and detect violations. We request an opportunity for additional review to assure that loopholes established therein are minimized to the extent practicable.

Finally, we request a 30-day extension on the comment period for these rules, as the complexity and issues involved cannot be understood readily. Alternatively, we request that DEP withdraw the rule, or at least those sections related to PALs, Clean Unit exemptions, and Pollution Control Projects, and establish a stakeholder group with balanced representation from industry and the environmental community to assure that a credible and enforceable rule results.

Sincerely

James Kotcon

James Kotcon
State Government Programs Chair

WEST VIRGINIA MANUFACTURERS ASSOCIATION

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

August 2, 2004

John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

RE: Comments on proposed revisions to 45 C.S.R 14 and 45 C.S.R. 19.

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION ON THE PROPOSED CHANGES TO 45 C.S.R. 14 AND 45 C.S.R. 19

The West Virginia Manufacturers Association ("WVMA") has many members operating major sources which are affected by the West Virginia Department of Environmental Protection's Division of Air Quality's ("DAQ") rules, including the proposed amendments to 45 C.S.R 14, *et seq.*, Permits for Construction and Major Modification for Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD) ("Rule 14") and 45 C.S.R. 19, *et seq.*, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Non-attainment ("Rule 19"). The WVMA appreciates the opportunity to submit the following comments in response to the proposed revisions by DAQ to Rules 14 and 19:

I. NSR Reform

The U.S. Environmental Protection Agency ("EPA") has recently undertaken to reform the PSD and Non-attainment New Source Review requirements for ("NSR") programs mandated by the Clean Air Act ("CAA"). We support the incorporation of these revisions to the federal rules by West Virginia as part of its State Implementation Plan ("SIP"). The DAQ has proposed to incorporate the EPA's NSR reform revisions in the proposed amendments to Rules 14 and 19. These changes are significant and include provisions regarding baseline emissions determination, actual-to-projected-actual emissions calculation methodology, plantwide applicability limitations ("PAL"), clean units, and pollution control projects ("PCP"). All of these proposed additions to Rules 14 and 19 are positive changes and provide much needed clarity and flexibility to the regulated community on the applicability of these rules. Currently, and in the past, the DAQ and the regulated community have had to rely too much on guidance documents to help make applicability and other determinations under the complex rules. Therefore, the WVMA supports the adoption of the NSR reform provisions by DAQ as amendments to Rules 14 and 19, as fully as possible.

The WVMA is also pleased that the DAQ has proposed revisions to cure the deficiencies in the current rules where inconsistencies appeared with regard to the physical and operational changes at electric utility steam generating units ("EGU's"). These provisions were originally prompted by the EPA in response to litigation involving the Wisconsin Electric Power Company ("WEPCO") and are commonly referred to as the WEPCO rules. In the current DAQ rules, only Rule 14 contains the WEPCO rule provisions which define actual emissions of an EGU following a physical or operational

change. However, Rule 19, the non-attainment rule, should also contain the WEPCO rule provisions, to make the actual emissions determinations after a physical or operational change consistent for EGU's in attainment and non-attainment areas. As numerous non-attainment areas have recently been designated in West Virginia, the current inconsistency should now be resolved.

With the proposed revisions, in which the EPA's baseline actual emissions determination is added to both Rule 14 and 19, this inconsistency should be alleviated, and as the proposed definitions include both EGU's and non-EGU's in Rule 14 and Rule 19. Therefore, the WVMA supports the proposed adoption of the baseline actual emissions determinations in Rules 14 and 19.

As part of the NSR reform, the EPA also promulgated changes to the routine maintenance, repair, and replacement ("RMRR") exclusion to the federal PSD and non-attainment NSR rules. Under the EPA's new RMRR provisions, the replacement of components of a process unit with identical components or their functional equivalents will come within the scope of the exclusion, provided the cost of replacing the component falls below twenty (20) percent of the replacement value of the process unit of which the component is a part, the replacement does not change the unit's basic design parameters, and the unit continues to meet enforceable emission and operational limitations. The WVMA is in support of EPA's changes as they provide owners and operators a clear range of repair and replacement opportunities for equipment in need of repair or replacement yet still fall within the NSR exclusion. The current State rule is vague and does not provide the certainty needed by the regulatory and regulated communities to clearly and consistently apply the exclusion. In most cases, the exclusion

is applied narrowly and, in effect, prohibits replacement or repair of significant plant components which hampers the safe, reliable and efficient operation of existing plants.

Due to various petitions filed with the EPA in response to the new RMRR exclusion provisions, the EPA was ordered on December 24, 2003, to stay the new RMRR provisions pending a court review of the provisions. As such, the DAQ has not proposed to adopt the RMRR exclusion provisions as revised by the EPA. Although the DAQ's choice not to adopt such standards now is understandable, the WVMA urges the DAQ to adopt the RMRR provisions as revised by EPA as soon as practicable, if and when the stay is lifted. As such, the WVMA supports the retention of the current RMRR exclusion provision in the proposed State rules. Moreover, under the current state rules, the RMRR rule exclusions do not clearly apply to all sources. The proposed revisions by DAQ cure this deficiency by revising 45 C.S.R. 14-2.40.i and by adding section 2.33.c.8 in 45 C.S.R. 19. The WVMA supports these proposed changes as they provide consistency in the rules for both utilities and non-utilities.

II. Definitions

As part of its proposed revisions, the DAQ has modified the definition of "actual emissions" under Rule 19. Under subsection 2.1.a. of Rule 19, the DAQ has proposed to revise the definition to state that actual emissions as of a particular date shall equal the average rate at which the unit actually emitted the pollutant during a consecutive 24-month period, where the current rule provides a two (2) year period. However, the DAQ has not proposed this same revision for the definition of "actual emissions" under Rule 14. This creates an inconsistency between the rules. Therefore, the WVMA

recommends that the DAQ adopt the same proposed language for the definition of "actual emissions" for Rule 14 and 19.

There is also an inconsistency between Rule 14 and 19 in the current definition of "allowable emissions". Under Rule 14, the definition includes the standards set forth in 40 CFR Parts 60, 61, and 63. The definition of "allowable emissions" in Rule 19 does not reference 40 CFR Part 63. There is no reference to 40 CFR Part 63 in the federal counterparts to this definition. At the least, the rules should be revised so that Rule 14 and 19 are consistent with regard to this definition. As such, the WVMA recommends that the DAQ revise the existing definition of "allowable emissions" so that it is identical under both Rules 14 and 19.

Under the proposed definition for "major stationary source" in Rule 14, the DAQ has listed each of the regulated stationary source types within one paragraph. In order to more easily read the exhaustive list contained in the paragraph, the WVMA recommends that the DAQ list the sources in table format, similar to that following subsection 2.43.f.

The proposed definition of "regulated pollutant" under Rules 14 and 19 are identical to the definitions of "regulated NSR pollutant" promulgated by the EPA in the NSR reforms. However, the WVMA recommends that the DAQ revise "regulated pollutant" to "regulated NSR pollutant" in order to be consistent with the federal regulations and to alleviate any confusion between these rules and other rules of the DAQ since this is a commonly used term.

III. Conflict with Other Permitting Rules

Under the proposed revisions to Section 21 of Rule 14, for sources which are required to obtain a permit under Rule 14, the provisions of 45 CSR 13 ("Rule 13") and of Rule

19 would not apply and the source would only be required to obtain one single permit. While this proposal may be administratively more efficient, there are no provisions under Rule 14 for updating of a Rule 14 permit. As such, under the proposed rules, it is unclear as to how to update a Rule 14 permit for a minor or administrative modification. Only Rule 13 contains provisions on how to obtain an administrative update or minor modification to a major source permit. As such, the WVMA suggests that in addition to the proposed revisions to this section and in order to eliminate any confusion, the DAQ should provide a cross reference to use the provisions in Rule 13 for administrative updates and minor modifications for a major source permit.

IV. Federal Land Management

Under the Federal Class I requirement provisions set forth in Rule 14, the DAQ has proposed a provision allowing for a Class I variance. The WVMA commends the DAQ for this proposed revision. However, there is no definition for "minor source baseline concentration" and it is not clear whether this increase is a cap or applies on a facility basis. We urge that the text be amended to clarify these items.

V. Permit Cancellation

As part of the provisions regarding the permit transfer, cancellation and responsibility section under Rules 14 and 19, the DAQ has proposed to add a section providing that any owner or operator who constructs, modifies or relocates any stationary source not in accordance with, *inter alia*, the application submitted to DAQ shall be subject to enforcement action. The WVMA does not support this proposed revision as information included in an application should not be the subject of such enforcement if it is not contained specifically within the permit. This proposal would subject permittees to

an unreasonable risk. Enforcement action should only be based upon permit provisions, not information only contained within an application. Such "incorporation by reference" is not a clear, fair or acceptable means of structuring a permit. The permit itself should contain in specific terms those conditions for which the permittee is responsible without reference to the application. This past approach of incorporation has led to numerous problems of both compliance and interpretation which should be assiduously avoided in the future.

In addition, in Rules 14 and 19 a provision has been proposed that states that a source that has not operated at least five hundred (500) hours in one 12-month period within the previous five (5)-year period may be considered permanently shutdown, which could subject such source to permit modification or revocation and also NSPS implications. This proposed section is also in 45 C.S.R. 13, but is not consistent with the EPA's policy for restarting major sources. Federal policy looks back for at least two years at the facts surrounding any shut down, the intention of the owner, and any reliance by the State regarding emissions inventory. In addition, this provision is in violation of state law which mandates that any state rule shall not be more stringent than its federal counterpart.

Furthermore, it is unclear from proposed language whether the 500 hours must be determined consecutively or cumulatively in one year. In some instances, a major stationary source might be inoperable for periods of time due to a major maintenance project in excess of 500 hours, or idled temporarily due to a business downturn, and should not be considered permanently shutdown. Such rule may also subject temporary, emergency, or other less-used sources to permit modification or revocation. This would

subject the owner or operator of the source to possible permit revocation and/or the costs and effort of reapplication or defense of its current permit for a source which is still being utilized. Therefore, the WVMA urges the DAQ to delete the proposed revisions as set forth above. At a minimum, no presumption of permanent shutdown should attach for at least two consecutive years of non-operation, unless the operator has in fact notified the DAQ that a unit has been permanently retired.

The WVMA appreciates the opportunity to comment on the proposed revisions to Rules 14 and 19 and supports the DAQ's proposal to adopt the NSR reforms promulgated by the EPA. However, the WVMA recommends that the DAQ reconsider the adoption of the additional proposals as discussed hereinabove.

Respectfully submitted,

The West Virginia Manufacturers Association
John Pitner, Air Team Leader
2001 Quarrier Street
Charleston, WV 25311

cc: Karen S. Price, President, WVMA
Air Team Members

Pamela F. Faggert
Vice President and Chief Environmental Officer

5000 Dominion Boulevard, Glen Allen, VA 23060
Phone: 804-273-3467

Dominion

August 2, 2004

Mr. John A. Benedict
Director
Division of Air Quality
West Virginia Department of Environmental Protection
7012 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304-2943

Dear Mr. Benedict:

Dominion owns and operates a large number of facilities in West Virginia that are potentially affected by the Clean Air Act's New Source Review (NSR) provisions, including such facilities as fossil fuel-fired electric generation facilities, and natural gas pipeline compressor stations. Dominion applauds the timely work by the Division of Air Quality (DAQ) on development of the revisions to the West Virginia State Implementation Plan to address the NSR Reform package promulgated on December 31, 2002. We are concerned that DAQ has decided to postpone work on the development of the routine maintenance, repair and replacement (RMRR) portion of the Federal new source review rule pending the outcome of the Federal court stay of the rule. We urge the agency to go forward with that important rulemaking in order to better position the agency for rule adoption once the court stay is lifted.

General

Section 2.1.a of the proposed changes to West Virginia Legislative Rule 45CSR14 defines, in part, "actual emissions" for NSR purposes as "...the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2) year period which..." We believe the DAQ intended to delete the phrase "two (2) year" and replace it with "consecutive 24-month". This is consistent with the Federal NSR rule at 40CFR51.165, 51.166 and 52.21, and the proposed changes to West Virginia Legislative Rule 45CSR19-2.1.a.

The DAQ has chosen to include in these rule revisions the opportunity for Federal Land Managers to approve "Class I variances" after conferring with the DAQ, even if emissions resulting from the proposed source or modification is expected to exceed Class I maximum allowable increases. We support this proposal. Though it is unlikely this provision will often be employed, it could facilitate permit streamlining near Class I areas.

Baseline Actual Emissions

Dominion supports the proposed revisions to West Virginia Legislative Rules 45CSR14-2.8 and 45CSR19-2.9 that conform to the Federal NSR language for determination of Baseline Actual Emissions.

We recommend that the DAQ carefully consider how "average rate" for baseline emissions is calculated. EPA has made it very clear in the NSR/PSD Reconsideration Final Notice (68FR63021) and the technical documentation supporting that decision[1] that estimates of fugitive emissions and emissions during periods of startup, shutdown, and malfunction are to be included in the baseline calculation. Nevertheless, these emissions are often difficult to quantify. Therefore, as the DAQ proceeds with implementation of this provision, Dominion urges the agency to adopt a practical, reasonable approach to quantification methods so that affected sources may take full benefit of this important change in the NSR regulations.

Pollution Control Project Exclusion

Dominion supports the DAQ changes at proposed West Virginia Legislative Rules 45CSR14-24 and 45CSR19-22 that expand the existing applicability of the Federal exclusion from new source review permitting for pollution control projects (PCPs) to facilities other than electric utilities.

We also agree with the inclusion of the Federal list of pollution control projects "presumed to be environmentally beneficial." We would point out that this list of PCPs attempts to be comprehensive for those technologies currently needed to comply with many of the emissions reduction programs that EUSGUs (electric utility steam generating units) and non-EUSGUs have been confronted with over the last few years. These include the reductions associated with the Federal Acid Rain Program, the Northeast Ozone Transport Region and the Federal NO_x SIP Call. With that in mind, Dominion would urge the DAQ to interpret the PCPs "presumed environmentally beneficial" list to include those emissions controls that will most likely be employed for compliance with two very recently proposed Federal rules: the Clean Air Interstate Rule (69 FR 4566) and the Clean Air Mercury Rule (69 FR 4652). The list includes many of the controls likely to be used to achieve the reductions required by these two important proposals (most notably, selective catalytic reduction and conventional or advanced flue gas desulfurization).

However, because there are likely to be advances in pollution control technologies in the very near future, brought about by these new rule proposals, as well as other, as yet unknown, emissions reduction programs, Dominion recommends the DAQ recognize broad interpretations of the existing Federal list of "presumed environmentally beneficial" technologies. For example, included on the list is "...absorbers and adsorbers...for control of...hazardous air pollutants." As the U.S. EPA has acknowledged in the preamble to the proposed Clean Air Mercury Rule, one of

---

[1] "Technical Support Document for the Prevention of Significant Deterioration (PSD) and Nonattainment Area New Source Review (NSR): Reconsideration", Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, EPA-456/R-03-005, October 30, 2003.

the more promising mercury control technologies currently in development is activated carbon injection (69FR4698). There should be no question that this type of control technology, though not specifically listed, should qualify for exclusion under this proposal.

Furthermore, the new emissions reduction challenges will inevitably spur development of other technologies, and innovative approaches to pollution control, including those developed to address multiple pollutants. Therefore, it is important that the DAQ administer the PCP exclusion rules with the aim of reducing overall pollution, adopting inclusive policies when considering non-listed PCPs that may include "hybrid" controls, or technologies that are operated in a series to control a primary pollutant as well as collateral increases of another pollutant.

Actual-to-Projected Actual ApplicabilityTest

Dominion supports the DAQ rule changes at West Virginia Legislative Rules 45CSR14-3.4.c and 45CSR19-3.4.c and agrees that the definition language for the "actual-to-projected actual applicability" should conform to the Federal rule at 40CFR51.165, 51.166 and 52.21.

Clean Unit Exemptions

Dominion supports the DAQ proposed provisions of West Virginia Legislative Rules 45CSR14-22 and 14-23 and 45CSR19-20 and 19-21 that conform to the Federal NSR provisions for Clean Unit Exemptions.

Plant-wide Applicability Limits (PALs)

Dominion supports the DAQ proposed provisions of West Virginia Legislative Rules 45CSR14-25 and 45CSR19-23 that conform to the Federal NSR language for Plant-wide Applicability Limits (PALs).

Thank you for this opportunity to comment. If you have any questions, please call Andy Gates at (804)273-2950.

Very truly yours,

Pamela F. Faggert

Pamela F. Faggert

United States Department of Agriculture | Forest Service | Monongahela National Forest | 200 Sycamore Street Elkins, WV 26241 304-636-1800

File Code: 2580-3
Date: August 2, 2004

Mr. John A. Benedict
Director
Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

Dear Mr. Benedict:

I am writing to comment on proposed revisions to legislative rule 45CSR14: Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD).

I suggest that language be added to the public review procedures in 45-14-17.4 to include "effects of emissions on visibility at the Class I areas" in the list of information for the legal advertisement placed by the Secretary. This recommendation is based on 40CFR51.307 subpart (a)(3) that states:

> *Consideration of any analysis performed by the Federal Land Manager, provided within 30 days of the notification and analysis required by paragraph (a)(1) of this section, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the State finds that such an analysis does not demonstrate to the satisfaction of the State that an adverse impact will result in the Federal Class I area, the State must, in the notice of public hearing, either explain its decision or give notice as to where the explanation can be obtained.*

By including this information in the legal advertisement, the public will be aware of Federal Land Manager concerns at Class I areas (should there by any associated with particular permit actions) as well as the State's reaction to these concerns.

Thank you for the opportunity to comment.

Sincerely,

Cindy M. Huber

CINDY M. HUBER
Air Resource Specialist

cc: Charles E Sams, Paul Wentworth, John Bunyak

American Electric Power
1 Riverside Plaza
Columbus, OH 43215-2373
www.aep.com

August 2, 2004

Mr. John A. Benedict, Director
West Virginia Department of Environmental Protection
Division of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304-2943

RE: Comments on Proposed Revisions to 45 CSR 14 and 45 CSR 19

Dear Director Benedict:

American Electric Power, the Appalachian Power Company and the Ohio Power Company (AEP) have several electric generating facilities operating as major sources which are affected by the West Virginia Department of Environmental Protection's Division of Air Quality's ("DAQ") rules, including the proposed amendments to 45 C.S.R 14, Permits for Construction and Major Modification for Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (PSD) ("Rule 14") and 45 C.S.R. 19, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Non-attainment ("Rule 19").

AEP supports the adoption of the NSR reform provisions by DAQ as amendments to Rules 14 and 19. AEP recommends that the proposed rules 24 and 19 be drafted to comport as closely as possible with both the intent and the language contained in the counterpart federal rule. These proposed additions to Rules 14 and 19 are positive changes and provide much needed clarity and flexibility to the regulated community on the applicability of these rules. Currently, and in the past, the DAQ and the regulated community have had to rely too much on guidance documents to help make applicability and other determinations under the complex rules. We are also pleased that the DAQ has proposed revisions to cure deficiencies in the current rules where inconsistencies appeared with regard to the physical and operational changes at major sources, including electric generating facilities. AEP offers the following comments related to specific sections of the proposed regulations.

Incorporation of WEPCO Provisions: In the current DAQ rules, only Rule 14 contains the WEPCO rule provisions that define actual emissions of an EGU following a physical or operational change. However, Rule 19, the non-attainment rule, should also contain the WEPCO rule provisions, to make the actual emissions determinations after a physical or operational change consistent for EGU's in attainment and non-attainment areas.

Routine Maintenance, Repair and Replacement: While this part of EPA's proposed NSR amendment is currently stayed by action of the DC Circuit Court, AEP is in support

of EPA's changes as they provide owners and operators a clear range of repair and replacement opportunities for equipment in need of this type of activity that would fall within the NSR exclusion. The current State rule is vague and does not provide the certainty needed by the regulatory and regulated communities to clearly and consistently apply the exclusion. In most cases, the exclusion is applied narrowly and, in effect, prohibits replacement or repair of significant plant components, which hampers the safe, reliable and efficient operation of existing plants. AEP urges the DAQ to adopt the RMRR provisions as revised by EPA as soon as practicable, if and when the stay is lifted.

Definition of Actual Emissions: As part of its proposed revisions, the DAQ has modified the definition of "actual emissions" under Rule 19. Under subsection 2.1.a. of Rule 19, the DAQ has proposed to revise the definition to state that actual emissions as of a particular date shall equal the average rate at which the unit actually emitted the pollutant during a consecutive 24-month period, where the current rule provides a two (2) year period. However, the DAQ has not proposed this same revision for the definition of "actual emissions" under Rule 14. This creates an inconsistency between the rules. Therefore, AEP recommends that the DAQ adopt the same proposed language for the definition of "actual emissions" for Rule 14 and 19.

Definition of *Allowable Emissions*: There is also an inconsistency between Rule 14 and 19 in the current definition of "allowable emissions". Under Rule 14, the definition includes the standards set forth in 40 CFR Parts 60, 61, and 63. The definition of "allowable emissions" in Rule 19 does not reference 40 CFR Part 63. There is no reference to 40 CFR Part 63 in the federal counterparts to this definition. At the least, the rules should be revised so that Rule 14 and 19 are consistent with regard to this definition. AEP recommends that the DAQ revise the existing definition of "allowable emissions" so that it is identical to the federal rule counterpart under both Rules 14 and 19.

Definition of *Regulated Pollutant*: The proposed definitions of "regulated pollutant" under Rules 14 and 19 are identical to the definitions of "regulated NSR pollutant" promulgated by the EPA in the NSR reforms. However, AEP recommends that the DAQ revise "regulated pollutant" to "regulated NSR pollutant" in order to be consistent with the federal regulations and to alleviate any confusion between these rules and other rules of the DAQ since this is a commonly used term.

Use of the *Applicable Regulations* Term: The use of the terminology "applicable regulations" appears to be inconsistent with terminology used by EPA in the NSR reforms. AEP recommends that the term "applicable regulation(s)," used throughout the proposed regulations, be replaced by the term "applicable SIP regulation(s)." The issue of SIP approved versus non-SIP approved rules has been long standing. Specification of the use of SIP approved regulations not only will make the proposed rules consistent with EPA NSR reforms, it will also allow for clear identification of applicable rules.

Updating or Revisions a Rule 14 Permit: Under the proposed revisions to Section 21 of Rule 14, for sources which are required to obtain a permit under Rule 14, the provisions of 45 CSR 13 ("Rule 13") and of Rule 19 would not apply and the source would only be required to obtain one single permit. While this proposal may be administratively more efficient, there are no provisions under Rule 14 for updating a Rule 14 permit. As such, under the proposed rules, it is unclear as to how to update a Rule 14 permit for a minor or administrative modification. Only Rule 13 contains provisions on how to obtain an administrative update or minor modification to a major source permit. AEP suggests that in addition to the proposed revisions to this section and in order to eliminate any confusion, the DAQ should provide a cross reference to use the provisions in Rule 13 for administrative updates and minor modifications for a major source permit.

Rule Provisions Dealing with Determining *Permanent Shutdown*: Section 17.3.b in 45 CSR 19 and Section 19.6 in 45 CSR 14 pertaining to permanent shutdown of sources is not consistent with EPA NSR reforms and should be removed from the proposed rules. In the event that WVDEP is opposed to removing the language to make the proposed rules consistent with EPA NSR reforms, AEP suggests that additional language be added to these regulatory sections that states that temporary, emergency and auxiliary support equipment are not subject to the 500 hour requirement. AEP also suggests that WVDEP make similar changes to 45 CSR 13.

Definition of *Minor Source Baseline Concentration*: Under the Federal Class I requirement provisions set forth in Rule 14, the DAQ has proposed a provision allowing for a Class I variance. AEP commends the DAQ for this proposed revision. However, there is no definition for "minor source baseline concentration". We urge that the text be amended to clarify these items.

Application Information as Enforceable Conditions: As part of the provisions regarding the permit transfer, cancellation and responsibility section under Rules 14 and 19, the DAQ has proposed to add a section providing that any owner or operator who constructs, modifies or relocates any stationary source not in accordance with the application submitted to DAQ shall be subject to enforcement action. AEP does not support this proposed revision, as information included in an application should not be the subject of such enforcement if it is not contained specifically within the permit. This proposal would subject permittee to an unreasonable risk. Enforcement action should only be based upon permit provisions, not information only contained within an application. Such "incorporation by reference" is not a clear, fair or acceptable means of structuring a permit. The permit itself should contain in specific terms those conditions for which the permittee is responsible without reference to the application. This past approach of incorporation has led to numerous problems of both compliance and interpretation, which should be avoided in the future.

AEP appreciates this opportunity to comment on the proposed revisions to Rules 14 and 19 and supports the DAQ's proposal to adopt the NSR reforms promulgated by the EPA. However, AEP recommends that the DAQ consider the adoption of the additional proposals as discussed above.

Sincerely,

Patrick A. Dal Porto
Manager -- AEP Air Quality Services

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

AUG 0 2 2004

John A. Benedict, Director
Division of Air Quality
7012 MacCorkle Avenue, S.E.
Charleston, WV 25304

Dear Mr. Benedict:

Thank you for the opportunity to comment on West Virginia's proposed revisions to Regulations 14 and 19 regarding pre-construction permits in nonattainment and attainment areas of the State. These revisions, among other things, incorporate the new Federal rules for the New Source Review Program that were promulgated on December 31, 2002 and became effective on March 3, 2003. We commend the State on its progress toward adopting these mandated revisions by the January 6, 2006 deadline.

We would like to call your attention to an issue that has remained unresolved with respect to the revisions the U.S. Environmental Protection Agency (EPA) proposed on July 23, 1996. At that time, EPA proposed changes to how emission reduction credits generated by the shutdown or curtailment of an emissions unit would be regulated. (See 61 FR 38250). EPA intends to follow through with a final rule on the use of these credits when we issue Phase II of the implementation rule for the new eight hour standard. EPA hopes to issue the implementation rule in September of this year. We are providing you with notice of these changes so that you may better plan how you should finalize the proposed revisions covering shut down credits in Regulation 14.

After reviewing the draft regulations, we have the following comments.

Regulation 14

14-1.5: The incorporation by reference (IBR) of the most current version of the Code of Federal Regulations (CFR) has been deleted but Regulation 14, in many parts, makes reference to the CFR. Which version of the CFR is intended to apply? Without the IBR, this will be unclear.

14-2.8.a.4: The citation at the end of the sentence is incorrect. Instead of 2.8.b, it should be 2.8.a.2. To clarify, the federal and state provisions correlate as follows:

51.166(b)(47)(i)(d) 14-2.8.a.4

The above federal rule references the following:

51.166(b)(47)(i)(b) .....14-2.8.a.2.

14.2.17: Typographical error in citation to part 51.

14.7.1: This subsection incorrectly defines "significant amounts"of nonattainment pollutants as the amount defined in section 2.74, i.e. the Prevention of Significant Deterioration (PSD) definition of that term. Regulation 19 already defines "significant" for nonattainment pollutants and, while the two rules may be coincidentally the same in some respects, it would be legally inappropriate to define this term differently in Regulation 14. Furthermore, a strict reading of this subsection as written would require that sources with significant increases of criteria pollutants in nonattainment areas would be required to meet all of the requirements of Regulation 19 for all other regulated pollutants. (EPA requires that nonattainment regulations only address criteria pollutants, unlike PSD which addresses all regulated pollutants).

14.15.1.d: EPA had previously commented that the original language in this subsection was inconsistent with 51.166. That conclusion was incorrect. The existing language is correct and should not be revised.

14.25.4.a.2: The reference to the public participation requirements in section 28.5 appears to be incorrect (there is no such section).

25.8.b.2.C: We suggest that the term "reviewing authority" be replaced with "Secretary".

Regulation 19

19-2.16: Citations are incorrect. The correct citations are:

> "Clean Unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, that is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to regulations approved by the Administrator in accordance with section **20**; or any emissions unit that has been designated by the Secretary as a Clean Unit, based on the criteria in subdivisions **21**.3.a through **21**.3.d., using a plan-approved permitting process; or any emissions unit that has been designated as a Clean Unit pursuant to 45CSR14 § 26.3.a through 26.3.d.

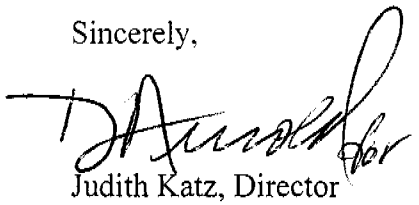
19-20.4.a: The last part of the last sentence which states "...and become effective for the State in which the unit located" can be removed since this would only apply to sources located in West Virginia.

19-24.1.b: This subsection only references Regulations 13 and 19 - should it also include Regulation 14?

Table 45-19A: The State may want to consider revising their regulations at this time to reflect the new 8 hour ozone nonattainment designations. These designations are all "Subpart I" areas and are not subject to the classification system that is outlined in Table 45-19A.

If you have any questions regarding these comments or the implementation of Federal rules for pre-construction permits, please don't hesitate to contact me or have your staff contact Kathleen Anderson at (215) 814-2173.

Sincerely,



Judith Katz, Director
Air Protection Division

45CSR14 and 45CSR19

PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION FOR THE PREVENTION OF SIGNIFICANT DETERIORATION
and
PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION WHICH CAUSE OR CONTRIBUTE TO NONATTAINMENT

RESPONSE TO COMMENTS

On July 2, 2004, the Division of Air Quality (DAQ) commenced the public comment period and subsequently held a public hearing on August 2, 2004 to accept oral comments on the proposed rules, 45CSR14 and 45CSR19. Written comments were also accepted through 6:00 PM on Monday, August 2, 2004.

Three people verbally commented at the public hearing concerning proposed rule 45CSR14. Seven commenters, two of whom also commented verbally, submitted written comments on proposed rule 45CSR14.

Two people verbally commented at the public hearing concerning proposed rule 45CSR19. Five commenters, two of whom also commented verbally, submitted written comments on proposed rule 45CSR19.

DAQ addresses these comments below.

I. Commenter: American Electric Power (AEP)

COMMENT A: *NSR Reform*

The commenter states:

> *AEP supports the adoption of the NSR reform provisions by DAQ as amendments to Rules 14 and 19. AEP recommends that the proposed rules 24* [sic] *and 19 be drafted to comport as closely as possible with both the intent and the language contained in the counterpart federal rule. These proposed additions to Rules 14 and 19 are positive changes and provide much needed clarity and flexibility to the regulated community on the applicability of these rules. Currently, and in the past, the DAQ and the regulated community have had to rely too much on guidance documents to help make applicability and other determinations under the complex rules. We are also pleased that the DAQ has proposed revisions to cure deficiencies in the current rules where inconsistencies appeared with regard to the physical and operational changes at major sources, including electric generating facilities.*

RESPONSE A: No response required.

COMMENT B: *Incorporation of WEPCO Provisions*

The commenter notes that "in the current DAQ rules, only Rule 14 contains the WEPCO rule provisions that define actual emissions of an EGU following a physical or operational change". The commenter contends that "Rule 19, the non-attainment rule, should also contain the WEPCO rule provisions, to make the actual emissions determinations after a physical or operational change consistent for EGU's in attainment and non-attainment areas."

RESPONSE B: The DAQ notes that the proposed revisions include the addition of the NSR Reform baseline actual emissions determination to both Rules 14 and 19. This revision should alleviate any inconsistency in the current rules regarding the WEPCO provisions.

COMMENT C: *Routine Maintenance, Repair and Replacement (RMRR)*

The commenter notes that even though the RMRR "part of EPA's proposed NSR amendment is currently stayed by action of the DC Circuit Court", the commenter "is in support of EPA's changes as they provide owners and operators a clear range of repair and replacement opportunities for equipment in need of this type of activity that would fall within the NSR exclusion." The commenter contends that "the current State rule is vague and does not provide the certainty needed by the regulatory and regulated communities to clearly and consistently apply the exclusion." The commenter believes that "in most cases, the exclusion is applied narrowly and, in effect, prohibits replacement or repair of significant plant components, which hampers the safe, reliable and efficient operation of existing plants." The commenter "urges the DAQ to adopt the RMRR provisions as revised by EPA as soon as practicable, if and when the stay is lifted."

RESPONSE C: As the commenter noted, the RMRR part of EPA's proposed NSR amendment is currently stayed by action of the DC Circuit Court. The DAQ will consider the final RMRR revisions if and when the stay is lifted, and make appropriate revisions to the rules as necessary.

COMMENT D: *45-14-2.1, pages 1-2; 45-19-2.1, page 1-2*

14-2.1.a and 19-2.1.a. The commenter states:

> *As part of its proposed revisions, the DAQ has modified the definition of "actual emissions" under Rule 19. Under subsection 2.1.a. of Rule 19, the DAQ has proposed to revise the definition to state that actual emissions as of a particular date shall equal the average rate at which the unit actually emitted the pollutant during a consecutive 24-month period, where the current rule provides a two (2) year*

period. However, the DAQ has not proposed this same revision for the definition of "actual emissions" under Rule 14. This creates an inconsistency between the rules. Therefore, AEP recommends that the DAQ adopt the same proposed language for the definition of "actual emissions" for Rule 14 and 19.

RESPONSE D: The DAQ agrees and has revised 45-14-2.1.a by replacing "two (2)-year", with "consecutive 24-month".

COMMENT E: *45-14-2.7, page 3; 45-19-2.4, page 2*

14-2.7.a and 19-2.4.a. The commenter states:

There is also an inconsistency between Rule 14 and 19 in the current definition of "allowable emissions". Under Rule 14, the definition includes the standards set forth in 40 CFR Parts 60, 61, and 63. The definition of "allowable emissions" in Rule 19 does not reference 40 CFR Part 63. There is no reference to 40 CFR Part 63 in the federal counterparts to this definition. At the least, the rules should be revised so that Rule 14 and 19 are consistent with regard to this definition. AEP recommends that the DAQ revise the existing definition of "allowable emissions" so that it is identical to the federal rule counterpart under both Rules 14 and 19.

RESPONSE E: The DAQ agrees, and has revised Rule 14 by deleting the reference to 40 CFR Part 63 in 45-14-2.7.a to maintain consistency.

COMMENT F: *45-14-2.66, page 17; 45-19-2.61, page 14*

14-2.66 and 19-2.61. The commenter notes that "the proposed definitions of "regulated pollutant" under Rules 14 and 19 are identical to the definitions of "regulated NSR pollutant" promulgated by the EPA in the NSR reforms." The commenter recommends that "the DAQ revise "regulated pollutant" to "regulated NSR pollutant" in order to be consistent with the federal regulations and to alleviate any confusion between these rules and other rules of the DAQ since this is a commonly used term."

RESPONSE F: The DAQ agrees, and has revised Rules 14 and 19 by replacing all references to "regulated pollutant" with "regulated NSR pollutant", except for the reference in subdivision 45CSR14-21.1, which has been replaced with "regulated air pollutant (as defined in 45CSR13)", and the reference in subdivision 45CSR19-24.1.b which has been replaced with "regulated air pollutant (as defined in 45CSR13) or regulated NSR pollutant".

COMMENT G: *Use of the term "Applicable Regulations"*

The commenter states:

The use of the terminology "applicable regulations" appears to be inconsistent with terminology used by EPA in the NSR reforms. AEP recommends that the term "applicable regulation(s)," used

throughout the proposed regulations, be replaced by the term "applicable SIP regulation(s)." The issue of SIP approved versus non-SIP approved rules has been long standing. Specification of the use of SIP approved regulations not only will make the proposed rules consistent with EPA NSR reforms, it will also allow for clear identification of applicable rules.

RESPONSE G: The DAQ does not agree that the only applicable regulations are those that are SIP approved. Under West Virginia law, the agency proposes rules which are then promulgated by the State Legislature, these rules then become law, regardless of whether or not EPA has approved them as a SIP revision. As the commenter is aware, it can take years (or even decades) for EPA to approve a change to the SIP even after the legislature has approved a revision in the law. While the DAQ agrees that the issue of SIP approved versus non-SIP approved rules has been long standing, the DAQ will not make any change in this proposed rule which would nullify any action of the state Legislature, while awaiting EPA SIP approval.

COMMENT H: *45-14-21, pages 35 - 36*

The commenter contends that under the proposed revisions to Section 21 of Rule 14, the provisions of 45 CSR 13 ("Rule 13") and of Rule 19 would not apply to sources which are required to obtain a permit under Rule 14, and the source would only be required to obtain one single permit. The commenter contends that "while this proposal may be administratively more efficient, there are no provisions under Rule 14 for updating a Rule 14 permit. As such, under the proposed rules, it is unclear as to how to update a Rule 14 permit for a minor or administrative modification." The commenter notes that "only Rule 13 contains provisions on how to obtain an administrative update or minor modification to a major source permit." The commenter suggests that "in addition to the proposed revisions to this section and in order to eliminate any confusion, the DAQ should provide a cross reference to use the provisions in Rule 13 for administrative updates and minor modifications for a major source permit."

RESPONSE H: DAQ notes that 45-14-21 states:

> 21.1. For sources required to obtain a permit under this rule, the provisions of 45CSR13 and 45CSR19 *requiring a permit do not apply, so that only a single permit is required*; provided, however, that:
> 21.1.a. . . ,
> 21.1.b. Any permit issued under this rule includes conditions that ensure compliance with the provisions of 45CSR13 and 45CSR19 to the extent applicable to any regulated pollutant not otherwise covered under this rule."(emphasis added)

The DAQ also notes that the proposed language in 45-14-21.1 clearly limits the provisions of Rules 13 and 19 that would not apply to only those provisions requiring a permit under Rules 13 and 19. Therefore, all other applicable provisions of Rules 13 and 19 would still apply, including those provisions of Rule 13 that pertain to administrative updates and minor modifications.

It follows that if a permit is issued pursuant to Rule 19, the provisions of Rules 13 and 14 requiring a permit would not apply, but all other applicable provisions of Rules 13 and 14 would apply.

And, if a permit is issued pursuant to Rule 14, then no provisions of Rule 19 are applicable (or a Rule 19 permit would be issued), the provisions of Rule 13 requiring a permit do not apply, but all other applicable provisions of Rule 13 would apply, including those provisions of Rule 13 that pertain to administrative updates and minor modifications.

Finally, if a Rule 13 permit is issued then no provisions of Rules 14 or 19 apply (or a Rule 14 or 19 permit would be issued).

Therefore, the DAQ agrees that the proposed language of 45-14-21.1 needs clarification. To this end, the DAQ has deleted "and 45 CSR19" from 45-14-21.1 and 45-14-21.1.b.

COMMENT I: *45-14-19.6, page 34; 45-19-17.3.b, page 29*

14-19.6 and 19-17.3.b. The commenter states:

> *Section 17.3.b in 45 CSR 19 and Section 19.6 in 45 CSR 14 pertaining to permanent shutdown of sources is not consistent with EPA NSR reforms and should be removed from the proposed rules. In the event that WVDEP is opposed to removing the language to make the proposed rules consistent with EPA NSR reforms, AEP suggests that additional language be added to these regulatory sections that states that temporary, emergency and auxiliary support equipment are not subject to the 500 hour requirement. AEP also suggests that WVDEP make similar changes to 45 CSR 13.*

RESPONSE I: The proposed language was included to provide consistency between all three pre-construction permitting rules (Rules 13, 14 and 19). However, consistency is already provided under the provisions of 45-14-21 and 45-19-24, which makes clear that the provisions of 45CSR13-10.5 would apply to a source with a permit issued pursuant to Rules 13, 14 and/or 19. Therefore, the DAQ has deleted subsection 14-19.6 and subdivision 19-17.3.b, and marked them "[Reserved.]"

The DAQ notes that Rule 13 is not currently subject to Legislative review, but acknowledges the comment.

COMMENT J: *45-14-13, page 27*

13.6. The commenter notes that "under the Federal Class I requirement provisions set forth in Rule 14, the DAQ has proposed a provision allowing for a Class I variance." The commenter commends the DAQ for this proposed revision. The commenter notes, however, that there is no definition for "minor source baseline concentration", and urges that the text be amended to clarify these items.

RESPONSE J: The DAQ agrees that the term "minor source baseline concentration" is not defined. However, the DAQ believes that the language is clear in its meaning, and is therefore unwilling to define a term which EPA has coined, without definition. If the commenter believes clarification is needed, they may seek guidance from EPA, or the DAQ will work with the commenter to obtain such guidance from EPA.

COMMENT K: *45-14-19.4, page 34; 45-19-17.3.d, page 29*

14-19.4 and 19-17.3.d. The commenter states:

> *As part of the provisions regarding the permit transfer, cancellation and responsibility section under Rules 14 and 19, the DAQ has proposed to add a section providing that any owner or operator who constructs, modifies or relocates any stationary source not in accordance with the application submitted to DAQ shall be subject to enforcement action. AEP does not support this proposed revision, as the commenter believes information included in an application should not be the subject of such enforcement if it is not contained specifically within the permit. This proposal would subject the permittee to an unreasonable risk. Enforcement action should only be based upon permit provisions, not information only contained within an application. Such "incorporation by reference" is not a clear, fair or acceptable means of structuring a permit, and that the permit itself should contain in specific terms those conditions for which the permittee is responsible without reference to the application. This past approach of incorporation has led to numerous problems of both compliance and interpretation in the past, and should be avoided in the future.*

RESPONSE K: DAQ notes that this provision is taken from the Federal counterpart regulation, 45 CFR §52.21(r)(1). It should also be noted that the commenter in Comment A "recommend[ed] that the proposed rules 14 and 19 be drafted to comport as closely as possible with both the intent and the language contained in the counterpart federal rule."

II. Commenter: Appalachian Center for the Economy & the Environment

COMMENT A: *NSR Reform*

The commenter states:

> *The environmental community has threes major concerns with the changes EPA made to 40 CFR §§ 51.165 and 51.166 in its December 2002 rule: 1) changes in the applicability provisions, the methods for calculating baseline and future emissions, and netting provisions will greatly expand the number of modifications to existing facilities that will escape NSR, resulting in significant increases in air pollution; 2) the special NSR exemptions encompassed in the Pollution Control Project, Clean Unit, and Plantwide Applicability Limits provisions as written will further expand the number of modifications exempt from NSR and lock in historically high pollution levels for years into the future, resulting in even greater increases in air pollution; and 3) the lack of preconstruction notice, record-keeping and reporting requirements, and enforceability will greatly impede state efforts to ensure compliance with the NSR program. We urge DAQ to recommend retaining West Virginia's NSR program in its present form, as the current program provides significantly greater air quality protection than the December 2002 federal rule.*

RESPONSE A: The commenter is opposed to the inclusion of the provisions of the NSR reform package promulgated by EPA on December 31, 2002 (67 FR 80186). It should be noted that DEP is required to adopt and submit revisions to the SIP implementing these changes no later than January 2, 2006 (67 FR 80240). If DEP does not submit the SIP revisions by January 2, 2006, EPA can issue a Federal Implementation Plan and implement the changes under their own program.

COMMENT B: *NSR Reform*

The commenter urges the Division of Air Quality to revise its proposed amendments so as to address the concerns listed above (refer to Comment II. A) before presenting a proposed rule to the legislature. The commenter also requests an additional 30-days to comment on the proposed changes to this rule. The commenter notes that "the proposed changes are significant, and thirty days is an inadequate time to evaluate the impact on West Virginia's program and future air quality." Also, the commenter requests "that the DAQ be more explicit in its announcements of rule changes." The commenter contends that "a mere listing of the rules to be changed does not offer the public a good sense of the impetus of the change or the rationale behind the decision."

The commenter notes that "it appears from several cross references in the current draft proposed rule that DAQ intends to incorporate in West Virginia's program all of the changes contained in the December 2002 rule."

RESPONSE B: Each year, and for every proposed air quality rule or revision thereto, the Division of Air Quality (DAQ) must make available to the general public any proposed revision to air quality rules. And, each year the Division is required to provide a thirty-day period for the general public to develop and submit comments regarding the proposed rules. This is done in accordance with the West Virginia Code and the State Administrative Procedures Act. In the case of the 2005 proposed rules 45CSR14 and 45CSR19, the Division did not stray from established public notice protocol.

The proposed revisions to Rules 45CSR14 and 45CSR19 encompass the incorporation of USEPA's New Source Review (NSR) reform package. USEPA first proposed revisions to governing federal NSR regulations 40 CFR §§51.165 and 51.166 in a notice published in the Federal Register on July 23, 1996 (61 FR 38250). On July 24, 1998, USEPA published a notice (63 FR 39875) for the purpose of soliciting comment on two specific aspects of the proposed revisions. On December 31, 2002, the USEPA published in the Federal Register at 67 FR 80186 a final NSR rule which triggered a requirement that West Virginia's legislative rules 45CSR14 and 45CSR19 be revised.

The December 31, 2002 final rule also requires the DAQ to submit a revision to the West Virginia State Implementation Plan (SIP) implementing the minimum program elements of the finalized federal NSR regulations 40 CFR §§51.165 and 51.166. The SIP revision must include the fully-adopted revised legislative rules 45CSR14 and 45CSR19 which contain the minimum NSR program elements. As set forth at 67 FR 80240, West Virginia's SIP revision must be submitted no later than January 2, 2006. Therefore, in order for West Virginia to meet this deadline, proposed rules 45CSR14 and 45CSR19 must be promulgated during the 2005 legislative session. The deadline for submittal of agency proposed rules for consideration during the 2005 session is August 27, 2004. As you know, the public notice period for these proposed rules began July 2, 2004, and ended August 2, 2004.

DEP notes the promulgation of USEPA's NSR reforms were subject to public review and scrutiny for more than five years before the December 31, 2002 final rule was published. USEPA has provided the public an adequate opportunity and ample time to participate in the development of the new NSR rules. In West Virginia, perhaps the most appropriate time to have requested a stakeholder process for or ask questions regarding NSR was after USEPA's December 31, 2002 final rule, and a reasonable time period before the recent July 2, 2004 public notice date. Absent such request during this time period, DAQ developed revisions to rules 45CSR14 and 45CSR19, incorporating the minimum program elements of the finalized federal NSR counterpart regulations.

Following the above timeline rationale, and noting that DAQ has not strayed from established public notice protocol, granting a request for a NSR reform stakeholder process at this time and delaying submittal of the proposed rules to the Legislature would certainly preclude a timely SIP revision to USEPA, as West Virginia could not promulgate fully adopted rules until after the January 2, 2006 SIP submittal deadline. Additionally, because the public had adequate opportunity to participate in NSR reform development, not only at the federal level, but also the state level, initiating a stakeholder process at this point in the rulemaking process cannot be justified on basis of program complexity or lack of public participation.

COMMENT C: *NSR Reform*

The commenter states:

> *The December 2002 federal rule adds a new § 51.166(a)(7) setting out the applicability criteria for PSD. The DAQ draft rule requires major stationary sources to comply with the requirements of this section but makes no changes to the section. Many of our concerns with § 51.166(a)(7) of the federal rule are discussed below in the context of the definitions for Major Stationary Sources, Baseline Actual Emissions, Projected Actual Emissions, and Netting. To the degree changes are made in these definitions, similar changes may be required in the state regulatory language that incorporates § 51.166(a)(7) of the federal rule.*

RESPONSE C: The DAQ has no authority to change the provisions of 40 CFR §51.166(a)(7).

COMMENT D: *Actual-to-projected actual applicability test for projects that only involve existing emissions units (51.166(a)(7)(c)).*

The commenter notes that this "change marks a significant shift from the actual-to-potential test for non-EGU sources in the current rule. A strong advantage of the actual-to-potential test is that it gives sources wishing to avoid NSR the option of accepting enforceable emission limits in their permits at levels below the NSR significance threshold. A major concern that with the December 2002 federal rule is that it does not provide a similar enforcement mechanism when sources rely on projected actual emissions to avoid NSR."

RESPONSE D: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of the actual-to-projected actual applicability test in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT E: *Hybrid test for projects that involve multiple types of emissions units (51.166(a)(7)(f)).*

The commenter states: "The hybrid emissions test, § 51.166(a)(7)(f), provides that if a modification involves existing units and Clean Units, only resulting emission increases at existing units are counted in calculating projected actual emissions. Resulting increases at Clean Units are ignored. If the total emissions increases resulting from a project involving existing and Clean Units would trigger NSR, but would not trigger NSR if increases at the Clean Unit were treated as zero, the effects of this hybrid test would be to exempt existing units from BACT not because they have met the Clean Unit requirements, but because they are paired with a Clean Unit."

The commenter states: "The WV program should eliminate the hybrid test. Projects involving existing units should be required to consider all resulting emissions increases in calculating projected annual emissions, regardless of whether those increases occur at an existing or Clean Unit. Language can be added to the Clean Unit provisions providing that the BACT analysis that qualified an existing unit as a Clean Unit satisfies the BACT requirement for that unit if a hybrid project triggers NSR."

RESPONSE E: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of the hybrid test in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT F: *Major Modification (51.166(b)(2)(i))*

The commenter states: "The definition for "Major modification" is incorporated by reference in the proposed rule. That definition requires a physical change to result in a significant emissions increase and a significant net emissions increase in order to trigger NSR. In other words, if a physical change results in a significant emissions increase, a source can still take advantage of the netting provisions to "net out" of NSR. However, if a physical change does not result in a significant emissions increase, but netting calculations would result in a significant net emissions increase, the source would not be required to "net in" to NSR."

For the reasons discussed elsewhere (refer to Comment II.L), the commenter urges the DAQ to eliminate netting from West Virginia's NSR program. The commenter states: "This will require defining major modification only as a physical change that results in a significant emissions increase. If netting is allowed, however, it should work to require a source to 'net in' to NSR as well as allowing it to 'net out'. This can be accomplished by defining major modification only as a physical change that results in a significant net emissions increase."

RESPONSE F: Please refer to responses II.A and II.B.

COMMENT G: *Baseline actual emissions (51.166(b)(47))*

The commenter states:

The following should be included in the West Virginia definition of baseline actual emissions. These changes are not part of the federal definition:

- *Do not allow emissions from malfunctions to be included in baseline calculations*
- *Clarify that utilities must adjust average rates during the 24-month baseline period downward to account for emissions standards implemented since the baseline period*
- *Do not exclude from the downward adjustment of baseline emissions and emissions limitation that is part of a maximum achievable control technology standard*
- *Require that the look-back period for calculating baseline emissions run from the date of the permit application rather than the date construction begins on a modification*
- *Adhere to a two-in-five look-back period for EGUs and do not provide DAQ with the discretion to select a different 24-month period outside the five-year look-back*
- *Require the retention of all information used to establish baseline actual emissions for ten years following the date the permit issues.*

These changes should be included in West Virginia's definition of baseline actual emissions.

RESPONSE G: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of baseline actual emissions in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT H: *Baseline actual emissions and look-back period*

The commenter states:

Apply the same five-year look-back period to EGUs and non-EGUs. The draft rule allows non-EGU sources to look-back ten years in order to select the consecutive 24-month period they wish to rely on to establish baseline actual emissions. In order to make an accurate determination of whether a change to a source results in a significant emissions increase, the period of operation used to establish baseline emissions must be representative of the source's current operations. A source should not be allowed to reach back to an unrepresentative period in order to inflate baseline emissions above current operations.

A ten-year look-back period is too long to carry the presumption that historical emissions are an accurate representation of current operations. We urge DAQ to apply the same five-year look-back period to all sources subject to NSR in the proposed rule.

RESPONSE H: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of the look-back period in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT I: *Different baseline periods for different regulated pollutants.*
The commenter states:

For projects involving multiple emissions units, the draft rule requires sources to use the same consecutive 24-month period to establish baseline emissions for all emissions units involved, but allows sources to select different 24-month periods for each regulated pollutant. In addition to greatly complicating the program and increasing the resources required to evaluate permit applications, this provision runs counter to the purpose of allowing sources to look back in time to select a baseline emissions period rather than relying on the 24-month period immediately preceding the change. That is, the look-back provision recognizes that emission levels are affected by business cycles and allows sources to select a 24-month period, within reason, that reflects the peak in a normal business cycle. Allowing different baseline periods for different pollutants permits a source to cherry-pick the highest 2-year period of emissions for each pollutant influenced by factors, such as type of fuel being used, that have nothing to do with a normal business cycle.

The commenter urges the DAQ to "require sources to use the same 24-month baseline emissions period for all affected emissions units and all pollutants."

RESPONSE I: Please refer to responses II.A and II.B.

The DAQ notes that in addition to fuel burning units, Rules 14 and 19 apply to many other types of units, including chemical units. A chemical unit may produce more than one product at the same unit, and each product may result in higher emissions of different pollutants. Therefore, allowing the use of different baseline periods for different pollutants is related to a normal business cycle.

It should be noted that EPA addressed the issue of the look-back period in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT J: *Projected Actual Emissions*

The commenter requests that DAQ "require sources intending to rely on projected actual calculations to avoid NSR to apply for an amendment to its Title V permit to make the projected actual emissions an emissions limit in the permit" and not permit construction until the revised Title V permit has been issued.

RESPONSE J: Please refer to responses II.A and II.B.

The DAQ also notes that EPA, in the preamble to the final NSR reform rules, addressed the question of "Should we impose an enforceable projected actual emissions level" at 69 FR 80204 (December 31, 2002). The DAQ refers the commenter to the Federal Register for further explanation.

COMMENT K: Demand Growth Exclusion

The commenter states:

> *Do not allow sources to exclude emissions it attributes to demand growth from the calculation of projected actual emissions. When EPA proposed adoption of an actual-to-projected-actual test for non-EGUs, it proposed to eliminate the demand growth exclusion from projected actuals for EGUs and non-EGUs. 63 Fed. Reg. At 39861 (July 24, 1998). EPA found that "the demand growth exclusion is problematic because it is self-implementing and self-policing," and noted that*
>
> *in a market economy, sources often make physical changes in order to respond to market forces and, consequently, there is no plausible distinction between emissions increases due solely to demand growth as an independent factor and those changes at a source that respond to, or create new, demand growth, which then result in increased capacity utilization.*
>
> Id. *There is no plausible way to distinguish emissions increases solely attributable to demand growth from emissions increases due to a physical change at an emissions unit. The inclusion of a demand growth exclusion in the method for calculating projected actual emissions creates a major loophole in the NSR program that will allow sources both to under-predict future emissions and to avoid enforcement for exceeding projected actual permit limits by attributing the exceedence to demand growth." For these reasons the commenter contends "the demand growth exclusion should be eliminated from West Virginia's NSR program for all sources.*
>
> *If a demand growth exclusion is retained in the proposed rule, the rule should be further changed to specify the record keeping and reporting requirements required to verify emissions increases are due*

solely to demand growth. Any information relied on to justify a demand growth exclusion must be in the public domain and open to public inspection.

RESPONSE K: Please refer to responses II.A and II.B.

It should be noted that EPA, in the preamble to the final NSR reform rules, addressed the issue of why the demand growth exclusion was retained [67 FR 80202] (December 31, 2002).

COMMENT L: *Netting*

The commenter states:

The rule should eliminate netting altogether. If netting is retained, rule should allow only one baseline period to be used for netting purposes for projects involving multiple units and multiple pollutants. Also, look-back period for netting purposes should be shortened to three years to make it more contemporaneous with project, and should specify that contemporaneous period ends when construction on the project is complete.

RESPONSE L: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of netting in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT M: *Replacement Units*

The commenter states: "The federal rule is unclear whether replacement units treated as new or existing units. EPA said on reconsideration that replacement units should be treated as existing units. West Virginia rule should say that replacement units are treated as new units. This means there should be zero emission baseline."

RESPONSE M: This comment appears to refer to the RMRR provisions of which have been stayed by the DC Circuit Court, and are not contained in the proposed rule.

Please refer to response I.C.

COMMENT N: *Pollution Control Projects*

The commenter states:

The purpose of PCP must be to reduce air emissions and creates a rebuttable presumption that projects listed in rule are PCPs.

The Federal rule 51.166(v) requires sources to secure permit prior to constructing PCP if not one of projects listed in rule, but requires only notice of listed project prior to commencing construction. West

Virginia should require approval that the listed project is a PCP prior to commencing construction."

RESPONSE N: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of Pollution Control Projects in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT O: *Clean Unit*

The commenter states:

West Virginia should require that to qualify as a clean unit, emissions unit must have received a major NSR permit within last five years, compared to ten years in federal rule.

There is an option in fed rule that allows sources to qualify as clean unit based on showing that emissions controls on unit are comparable or substantially as effective as BACT. This option should be eliminated. Sources should not be allowed to qualify as clean unit other than through BACT/LAER determination. Although determination would be made outside PSD/nonattainment process, it could be conducted in same manner. BACT/LAER determination can be made upon application of unit or in conjunction with issuance of Title V permit.

Clean Unit status should last no more than five years after the date it qualifies as a Clean Unit (i.e. date of BACT/LAER determination). This represents outside limit of reasonable time period for assuming BACT/LAER determination would not change significantly, given rapid evolution of control technology.

If a Clean Unit located in area that was in attainment at time of Clean Unit designation, and area subsequently designated nonattainment, designation should expire unless source demonstrates facility meets LAER.

RESPONSE O: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of Clean Units in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT P: *Plantwide Applicability Limits*

The commenter states:

PAL baseline should be contemporaneous with creation of PAL to ensure reliance on current data and avoid grandfathering of historic high emission levels. This should be two consecutive years prior to

PAL application. If DAQ wants to retain discretion to select alternate period to reflect highest production rates, this discretion should not reach back beyond five years. If an alternate baseline period is allowed, for emission units not in operation during PAL baseline period, the baseline emissions should be actual emissions for two years immediately preceding PAL application. If unit does not have two-year emissions history, baseline emissions should be zero. As with other baseline provisions, single baseline should be used for all pollutants.

- *any new unit constructed under a PAL should be required to install BACT*
- *If a source has taken a synthetic minor emissions level to avoid NSR for any emissions unit and a PAL is subsequently established covering such units, source must continue to comply with synthetic minor limits. Such limits can be removed only if BACT is installed on the unit.*
- *PAL limit can be increased during term of PAL only if sum of emissions from small units, plus emissions from major units assuming BACT, plus emissions from all allowable new units, exceeds existing limit. Emissions for major units should be determined by conducting new BACT analysis, regardless of when any previous BACT analysis was performed.*
- *If PAL renewal sought, PAL should be renewed at existing PAL level only if it is lower than the PAL baseline emissions in the two years immediately preceding the renewal application plus significant level(s) for the PAL pollutant(s).*

RESPONSE P: Please refer to responses II.A and II.B.

It should be noted that EPA addressed the issue of PALs in the preamble to the final NSR reform rules [67 FR 80186] (December 31, 2002).

COMMENT Q: <u>*Class I areas and role of Federal Land Managers*</u>

The commenter states:

The role of the Feral Land Manager (FLM) should be significant in review PSD permits. Notification should be given to the FLM as early in the process as possible. Because the FLM is monitoring the impacts to areas of special concern in our country and state, they should be afforded greater opportunity to be involved in the permit review process from the beginning.

RESPONSE Q: The DAQ notes that the rule as proposed requires the DAQ to notify the FLM of any advance notice that a source will be filing an application for an NSR permit. 45CSR14-13.4, as proposed, requires the Secretary to "notify all affected Federal land managers within 30 days of receipt of any advance

notice of any such permit application". Therefore, the DAQ will not revise the proposed language.

III. Commenter: Ms. Pauline Canterberry, Representing the town of Sylvester, West Virginia

COMMENT A: *Elk Run Mining site in Sylvester, WV*
Commenter expressed concern about the air quality in Sylvester, due to the operations at the Elk Run Mining complex. Commenter does not believe West Virginia has stringent enough laws to protect the air quality in Sylvester and questioned whether or not Elk Run Mining is subject to Rule 14.

RESPONSE A: The DAQ appreciates the commenters concern regarding the air quality in Sylvester, and appearance at the public hearing for 45CSR14. However, the Elk Run Mining complex, situated near Sylvester, is not subject to Rule 14. Therefore, discussion of impacts of this source on the air quality of Sylvester is not germane to proposed rule 45CSR14.

IV. Commenter: Dominion

COMMENT A: *NSR Reform*
The commenter applauds the timely work by the DAQ on development of the revisions to the WV State Implementation Plan (SIP) to address the NSR Reform package promulgated on December 31, 2002.

RESPONSE A: No response required.

COMMENT B: *Routine Maintenance, Repair and Replacement (RMRR)*
The commenter is concerned that DAQ has decided to postpone work on the development of the RMRR portion of the Federal new source review rule pending the outcome of the Federal court stay on the rule. The commenter urges the agency to go forward with that important rulemaking in order to better position the agency for rule adoption once the court stay is lifted.

RESPONSE B: Please refer to response I.C.

COMMENT C: *45-14-2, pages 1-2; 45-19-2.1.a, pages 1-2*
14-2.1.a and 19-2.1.a.. The commenter notes that subdivision 2.1.a of the proposed changes to Rule 14 defines, in part, "actual emissions" for NSR purposes as "...the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2) year period which..." The commenter believes the DAQ intended to delete the phrase "two (2) year" and replace it with "consecutive 24-month". This is consistent with the Federal NSR rule

at 40CFR51.165, 51.166 and 52.21, and the proposed changes to 45-19-2.1.a.

RESPONSE C: Please refer to response I.D.

COMMENT D: *45-14-13, page 27*
The commenter notes that "the DAQ has chosen to include in these rule revisions the opportunity for Federal Land Managers to approve "Class I variances" after conferring with the DAQ, even if emissions resulting from a proposed source or modification is expected to exceed Class I maximum allowable increases." The commenter supports this proposal. The commenter notes that even though "it is unlikely this provision will often be employed, it could facilitate permit streamlining near Class I areas."

RESPONSE D: No response required.

COMMENT E: *45-15-2.8, pages 3-4; 45-19-2.9, page 2-4*
The commenter supports the proposed revisions to 45-14-2.8 and 45-19-2.9 that conform to the Federal NSR language for determination of Baseline Actual Emissions.

RESPONSE E: No response required.

COMMENT F: *45-15-2.8, pages 3-4; 45-19-2.9, page 2-4*
The commenter "recommend[s] that the DAQ carefully consider how "average rate" for baseline emissions is calculated. EPA has made it very clear in the NSR/PSD Reconsideration Final Notice (68FR63021) and the technical documentation supporting that decision that estimates of fugitive emissions and emissions during periods of startup, shutdown, and malfunction are to be included in the baseline calculation. Nevertheless, these emissions are often difficult to quantify." Therefore, as the DAQ proceeds with implementation or this provision, the commenter "urges the agency to adopt a practical, reasonable approach to quantification methods so that affected sources may take full benefit of this important change in the NSR regulations."

RESPONSE F: The DAQ acknowledges the commenter's concern, however, it should be noted that while these emissions may be difficult to quantify, there are many practical and reasonable approaches to quantification available to sources, such as emission calculations, emissions factors, test methodologies, and vendor data.

COMMENT G: *45-14-24, pages 44 - 46; 45-19-22, pages 39-41*
The commenter supports the changes to 45-14-24 and 45-19-22 that expand the existing applicability of the Federal exclusion from new source review

permitting for pollution control projects (PCPs) to facilities other than electric utilities.

RESPONSE G: No response required.

COMMENT H: *45-14-24, pages 44 - 46; 45-19-22, pages 39-41*

The commenter agrees with the inclusion of the Federal list of pollution control projects "presumed to be environmentally beneficial." The commenter points out that "this list of PCPs attempts to be comprehensive for those technologies currently needed to comply with many of the emissions reduction programs that EUSGUs (electric utility steam generating units) and non-EUSGUs have been confronted with over the last few years. These include the reductions associated with the Federal Acid Rain Program, the Northeast Ozone Transport Region and the Federal NO_X SIP Call." With that in mind, the commenter urges "the DAQ to interpret the PCPs "presumed environmentally beneficial" list to include those emissions controls that will most likely be employed for compliance with two very recently proposed Federal rules: The Clean Air Interstate Rule (69 FR 4566) and the Clean Air Mercury Rule (69 FR 4652). The list includes many of the controls likely to be used to achieve the reductions required by these two important proposals (most notably, selective catalytic reduction and conventional or advanced flue gas desulfurization)."

However, the commenter notes that "there are likely to be advances in pollution control technologies in the very near future, brought about by these new rule proposals, as well as other, as yet unknown, emissions reductions programs." The commenter "recommends the DAQ recognize broad interpretations of the existing Federal list of "presumed environmentally beneficial" technologies. For example, included on the list is "...absorbers and adsorbers...for control of...hazardous air pollutants." As the U.S. EPA has acknowledged in the preamble to the proposed Clean Air Mercury Rule, one of the more promising mercury control technologies currently in development is activated carbon injection (69FR4698). There should be no question that this type of control technology, though not specifically listed, should qualify for exclusion under this proposal."

Furthermore, the commenter notes that "the new emissions reduction challenges will inevitably spur development of other technologies, and innovative approaches to pollution control, including those developed to address multiple pollutants." Therefore, the commenter notes that "it is important that the DAQ administer the PCP exclusion rules with the aim of reducing overall pollution, adopting inclusive policies when considering non-listed PCPs that may include "hybrid" controls, or technologies that are operated in a series to control a primary pollutant as well as collateral increases of another pollutant."

RESPONSE H: The DAQ has included the list of PCPs "presumed to be environmentally beneficial." However, in regard to the request for a broad interpretation of the list of PCPs, it should be noted that subsection 14-24.5 and 19-22.5 provides for a permit process for unlisted projects.

V. Commenter: Ms. Conni Gratop-Lewis, West Virginia Environmental Council

COMMENT A: *Request for Stakeholder Process*
Commenter expressed disappointment that a stakeholder process was not used for Rules 14 and 19, noting that she was a veteran of a previous stakeholder process with the former Office of Air Quality, and that it was an excellent process. Commenter believes "that the process is diminished by not including the public early on." Commenter "recognize(s) that it is a burden on the staff ", but notes that "they have proven themselves up to the challenge in the past."

RESPONSE A: Please refer to response II.B.

COMMENT B: *45-14-2, page 3*
2.8.a.2. The commenter is concerned about the baseline actual emissions calculations which are contained in the definition. The part of the calculation that the commenter objects to is the part contained in 2.8.a.2, which requires that "the average [emission rate] shall be adjusted downward to exclude noncompliant emissions." The commenter believes that "noncompliant emissions should be included in calculating the average [emission] rate." The commenter notes that "the language [excluding noncompliant emissions] is used several times in the proposed regulation."

RESPONSE B: The DAQ respectfully disagrees. 45CSR14-2.8.a.2 states: "The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation. . ." The baseline actual emissions are the baseline against which any emissions increases are measured to determine whether or not a modification constitutes a major modification, which, in turn, determines whether or not the modification would be subject to Rule 14 (PSD). If the source were not required to exclude any noncompliant emissions, the source would be given the benefit of having an artificially high baseline, which could allow the source to escape PSD review. Therefore, a revision is not required.

COMMENT C: *45-14-2.66, page 17*
2.66.d. The commenter "had a question about the wording in 2.66.d." The commenter states: "I had trouble following the language given the number of punctuation marks and double and triple negatives. I believe the language is designed to be unclear and that may be a deficiency in the federal regulations that you copied."

RESPONSE C: The DAQ notes that the language is the same as 40 CFR§51.166(b)(49). The DAQ agrees that the language can be confusing, however, upon careful reading of the language it is clear that hazardous air pollutants (HAPs) are not regulated, unless they are a constituent or precursor of a general pollutant.

COMMENT D: *45-14-19, page 34*

19.8.e.3. The commenter notes that 19.8.e lists the information required to be contained in an annual report to be submitted to the Secretary if the annual emissions exceed the baseline actual emissions by a significant amount, and 19.8.e.3. states the report may contain "any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)." The commenter goes on to state: "The operator should be required to provide an explanation as to why the emissions are different."

RESPONSE D: Proposed Rule 14 lists the required elements of the annual report, and gives the source the opportunity to explain why they are in violation of the rule, but does not compel them to do so at this point. The DAQ may then initiate enforcement action, at which point the source will be compelled to explain, among other things, why the annual emissions exceed preconstruction projection.

COMMENT E: *45-14-26, page 55, 45-19-25, page 50*

14-26.1 and 19-25.1. The commenter notes that this section relates to inconsistency between rules and that the inconsistency "shall be resolved by the Secretary and such determination shall be based upon the application of the more stringent provision, term . . .." The commenter requests that the language be changed to the "Secretary shall implement the more stringent provision, term. . ."

RESPONSE E: DAQ believes that the cited language does indeed require that the Secretary implement the more stringent provision, since the rule requires the Secretary to resolve inconsistency between rules by a determination which "shall be based upon the application of the more stringent provision, term, condition, method or rule."

VI. Commenter: Sierra Club West Virginia Chapter

COMMENT A: *NSR Reform*

The commenter opposes "the use of Plant-wide Applicability Limits (PALs) and recommends that all changes relating to PALs be deleted. This includes amendments to sections 2.1, 2.2, 2.8, 2.39. 2.40, 2.40.i, 2.40l, 2.46.b, 2.50-2.55, 2.75, 2.76, 2.78 and sections 22-25."

The commenter also opposes "the provisions in Sections 22-25." The commenter notes that "the use of the Clean Unit designation, Plant-wide Applicability Limits, and Pollution Control Projects, while these may or may not be laudable in their intent, represent substantial policy issues (and backsliding on rule stringency) that should be addressed through legislation rather than rule-making." In particular, the commenter notes that "the concept of PALs has been debated in the Legislature repeatedly, and has been rejected more than once." The commenter believes that "it is inappropriate for the DEP to now give to industry through rule-making what they could not get through legislation."

RESPONSE A: Please refer to response II.A.

In regard to the commenter's contention that "the concept of PALs has been debated in the Legislature repeatedly, and has been rejected more than once" and that "it is inappropriate for the DEP to now give to industry through rule-making what they could not get through legislation." The DAQ notes that this "debate" has existed on a federal and not a state level. The DAQ also notes, for State rules to become effective, they must first be approved by the Legislature.

COMMENT B: *45-14-2.40 and 2.75, pages 8 and 19; 45-19-2.33 and 2.66, pages 6-7 and 14*
14-2.40 and 2.75, and 19-2.33 and 2.66. The commenter notes that "the distinction between a "significant emissions increase" and a "significant net emissions increase" appears to be either strictly semantics (and very confusing at that), or is an attempt to provide an exemption for a wide range of major modifications not intended by the Legislature."

RESPONSE B: The DAQ does not believe the distinction is "strictly semantics or an attempt to provide an exemption". "Net" is defined in The American Heritage Dictionary (Second College Edition, 1991), as "remaining after all deductions and adjustments have been made." In determining a "significant emissions increase" one project or modification is considered, while contemporaneous emissions increases and decreases resulting from other projects or modifications are considered when determining whether or not a "significant net emissions increase" will occur. The "net emissions increase" is the increase "remaining after all deductions and adjustments have been made." If the "net emissions increase" is "significant" as defined in the rule, then it is considered a "significant net emissions increase". Therefore, the DAQ believes that the difference between a "significant emissions increase" and a "significant net emissions increase" is clear.

COMMENT C: *45-14-2, page 2*
14-2.4. The commenter recommends "deleting all but the first sentence of subsection 2.4, the definition of 'adverse impact on visibility'". The commenter contends that "making 'the determination on a case-by-case basis

taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility' will needlessly complicate the determination for WV-DEP and does nothing to improve air quality-related values." The commenter contends that the "DAQ has no expertise and no methodology for predicting the 'times of visitor use of the Federal Class I Areas', so any attempt to limit a determination of adverse impact on visibility appears to be an arbitrary and capricious attempt to actually allow such an adverse impact." The commenter contends that "Sierra Club members use Wilderness Areas and National Parks at all times of the year and every hour of the day and in all kinds of weather. Enjoyment of the spectacular views at Dolly Sods or Otter Creek are essential to this activity and is a Congressionally protected use, as specified in their designation as Class I Areas."

RESPONSE C: The DAQ notes that this definition is taken from the Federal counterpart regulation, 45 CFR §52.21(b)(29). The DAQ further notes that the Federal Land Manager (FLM) is charged with making a "demonstration that the emissions from the proposed major stationary source or major modification would have an adverse impact on the air quality related values (including visibility) of any Federal mandatory Class I lands". Therefore, such "case-by-case" determinations are made by the FLMs rather than the DAQ. The DAQ refers the commenter to 45CSR14-13.5.

COMMENT D: *45-14-2.8, pages 3-4, 45-19-2.9, pages 2-3*
14-2.8 and 19-2.9.. The commenter recommends that, "should DEP choose to retain PALs "(contrary to the commenters recommendation in COMMENT A above), that "in setting a baseline (section 2.8), no distinction for electric generating facilities versus other facilities be made." The commenter contends that "there is no apparent justification for needlessly complicating the rules or providing a separate set of rules for one industry sector versus another."

The commenter further recommends that "the baseline date should be set at the consecutive 24-month period within the previous five years 'demonstrated to the satisfaction of the Secretary' to be representative of the facilities emissions. (Delete the phrase 'selected by the owner or operator')." The commenter states: " DEP must not defer its enforcement responsibilities to the regulated facilities by letting them pick whatever 24-month period they choose, even if it is no longer representative of the facilities baseline emissions. As such, there is simply no good reason to allow a facility to go back 10 years to choose a baseline, thus a five-year window should be more than adequate."

RESPONSE D: Please refer to response II.A.

COMMENT E: *45-14-2, page 5*

14-2.12. The commenter states:

> *Section 2.12 defines BACT using terminology that is inconsistent with the Clean Air Act. The end of the last sentence reads: "including fuel cleaning or treatment or innovative* fuel combination techniques *for control of such pollutant." The correct language in the Clean Air Act refers to "innovative fuel combustion technologies". The term "fuel combination techniques" appears to be either a misprint, or is a deliberate attempt to limit the application of BACT, as there does not appear to be any legal or technical meaning to the term. Since this issue was raised repeatedly in comments regarding the air permit for the Longview power plant, it is unclear why this was not corrected in the current revisions. We strongly recommend that the definition of BACT be corrected to incorporate the language in the Clean Air Act.*

RESPONSE E: The DAQ agrees that there is a misprint in the definition of BACT. DAQ has corrected the definition to incorporate the language in the Clean Air Act. The end of the first sentence has been changed from "including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant" to "including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant". It should be noted that the commenter incorrectly quoted the CAA as using the phrase "innovative fuel combustion technologies", when in fact the CAAA of 1990, Section 169(3) [42 U.S.C. section 7479 (3)] uses the phrase "innovative fuel combustion techniques".

COMMENT F: *45-14-13, page 27*

14-13.6. The commenter states:

> *The proposed [Class I] variance procedure does not have safeguards to adequately protect Class I Areas and their Air Quality Related Values. The allowable increase in SO2 deposition, for example, will lead to considerable damage to forest soils and streams impacted by acid deposition, as these soils and streams are already suffering significant degradation. The variance procedure should be eliminated because it does not provide for an improvement in air quality and a net reduction in acid deposition to vulnerable sites. Similar provisions are needed to assure that ozone damage to forest trees and other vegetation is reduced. The rule be revised to state specifically that permits that propose emissions in excess of PSD increments must be denied.*

RESPONSE F: The DAQ has included the Class I variances procedures which are contained in 40 CFR §51.166(p)(4). The DAQ notes that the Secretary cannot issue a variance under this subsection without the concurrence of the Federal Land Manager, who is charged with direct responsibility for Class I areas and has

an affirmative responsibility to protect the air quality related values, including visibility.

COMMENT G: *45-14-15, page 29*

14-15.1.d. The commenter states:

> *Section 15.1.d provides for "temporary" exceedence of allowable increments for periods not to exceed two years. This provision in essence allows polluters to break the law for two years and amounts to a "get out of jail free" card. We oppose any exemption for violations of emissions limits.*

RESPONSE G: Please refer to response II.A.

COMMENT H: *45-14-17, pages 32 - 33*

The commenter states: "Section 17 still does not contain clear guidance on how DEP will respond to substantive public comment. This has become an increasingly embarrassing problem for DEP, as the response to comments is negligible, and has degenerated into a rote denial of any substantive public comment, without regard to the merit or consequences of the comments." The commenter recommends that "an additional section be added to require that, before a final determination, DEP be required to issue responses to any substantive comments, which shall include either a clear explanation of how the comments were incorporated into the final permit, or a rebuttable explanation of why no further response is required."

The commenter states: "The current response to comments procedure has created a huge reservoir of ill will because of the profound perception that DEP either does not care to hear from the public, regards public comment as a nuisance, or simply ignores all public comments. The perception is clear that DEP makes much more significant efforts to address concerns from permit applicants than from the public for whom DEP is supposedly working. A valid response to comments procedure would go a long way to resolving this concern and repairing the crisis of confidence between the public and DEP."

RESPONSE H: The DAQ notes that the public review and comment requirements in Rule 14 mirror similar requirements in the Federal counterpart regulation. Under the Federal major source permitting regulation, all public comments are required to be considered. Historically, the DAQ has taken all public comments on permit applications and developed response documents. During a recent major source application review the DAQ developed a response document numbering more than 300 pages.

The DAQ makes every effort to remain courteous and professional in all our communications with the public. We recognize that not all requests or comments can be addressed to the satisfaction of the commenter. All air

quality related issues, questions, comments received during the permit application review and the public comment period are always taken into consideration before revisions to a draft permit are made.

The DAQ must review a permit application within its authorities and responsibilities under the Air Pollution Control Act (APCA) and applicable state and federal air quality regulations. The decision to issue or deny a permit must be based solely on the APCA and regulations. These basic restrictions on how the program operates means that sometimes response to a public comment is "No" or "We don't have the authority to do that". The intended purpose of the public participation process is to provide the public with the opportunity to be informed of, and ask questions about the permitting process associated with a specific permit application.

COMMENT I: *45-14-25.12 - 25.12, pages 52 - 55; 45-19-23.12 - 23.14, pages 46-49*

14-25.12 - 25.14 and 19-23.12 - 23.14. The commenter states:

> *The monitoring and enforcement procedures for PALs are almost certainly inadequate. The very complexity of the rules is an indication and an admission by DEP of how difficult it will be to monitor emissions and detect violations. We request an opportunity for additional review to assure that loopholes established therein are minimized to the extent practicable.*

RESPONSE I: Please refer to response II.A.

COMMENT J: *Request for Extension of Comment Period*

The commenter requests a 30-day extension on the comment period, as the complexity and issues involved cannot be understood readily. Alternatively, the commenter requests that DEP withdraw the rule, "or at least those sections related to PALS, Clean Unit exemptions, and Pollution Control Projects, and establish a stakeholder group with balanced representation from industry and the environmental community to assure that a credible and enforceable rule results."

RESPONSE J: Please refer to response II.B.

VII. Commenter: US Department of Agriculture, Forest Service, Monongahela National Forest

COMMENT A: *45-14-17.4, Page 32*

The commenter suggested that language be added to the public review procedures in 45-14-17.4 to include "effects of emissions on visibility at the Class I areas" in the list of information for the legal advertisement placed by the Secretary.

RESPONSE A: The DAQ respectfully disagrees. 45CSR14-17.4 mirrors the requirements for public notice in the Federal counterpart regulation. While these are the minimum requirements under the rule, the DAQ reserves the right to include other information in a public notice on a case-by-case basis.

The comment states the recommendation is based on 40 CFR §51.307, subpart (a)(3). Under this provision of the Federal regulation, if the Federal Land Manager (FLM) submits a demonstration that there may be an adverse impact on Air Quality Related Value(s) to DAQ within 30 days of the receipt by the FLM of the initial permit application required in (a)(1) and the DAQ finds that such an analysis does not demonstrate to the satisfaction of the Secretary that an adverse impact will result in the Federal Class I area, the DAQ must either explain its decision in the notice of public hearing, or give notice as to where the explanation can be obtained. This is part of the Federal regulation and the DAQ will adhere to its provisions if the FLM submits such a demonstration within the timeframes specified in the Federal regulation.

However, it has been the experience of the DAQ that such a demonstration can be time intensive and is most likely to be submitted to the DAQ around the time of public notice, after the DAQ has completed their review and developed a preliminary determination. The DAQ must then review such a demonstration as required by the Federal regulation.

The Federal regulation seems to take into account the timing and complexity of such reviews and has required, in the provisions of 40CFR51.166 subpart (o)(3), that the DAQ provide a mechanism for the Federal Land Manager (FLM), after the preliminary determination, to present a demonstration that emissions from the proposed source would have an adverse impact on the air quality related values (including visibility) of any Federal mandatory Class I lands. The DAQ has provided this opportunity to the FLM in Section 13.5 of Rule 14.

Section 13 of Rule 14 also provides additional requirements/notifications for FLMs.

VIII. Commenter: US EPA

COMMENT A. *45-14-1.5, Page 1*

1.5. The commenter notes that "the incorporation by reference (IBR) of the most current version of the Code of Federal Regulations (CFR) has been deleted but Rule 14, in many parts, makes reference to the CFR." The commenter questions "which version of the CFR is intended to apply", and suggests that "without the IBR, this will be unclear."

RESPONSE A. The DAQ agrees and has revised the proposed language, retaining the current subsection 14-1.5, re-titling it "Federal Regulations." and retaining the last sentence with a revised date of "July 1, 2004". As a result of retaining subsection 14-1.5, DAQ has renumbered the proposed subsection 14-1.5, making it subsection 14-1.6.

The DAQ notes that Rule 19 does not contain the IBR language, but that for the same reasons that were articulated by EPA in their comment on Rule 14, the IBR language is also necessary in Rule 19. Therefore, to maintain consistency between Rules 14 and 19, the DAQ has added a new subsection 45-19.1.5. which states:

> 1.5. Federal Regulation. -- Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will, for the purpose of this rule, be construed as that version which was in effect as of July 1, 2004.

The DAQ also renumbered the proposed subsection 19-1.5, to 19-1.6.

COMMENT B. *45-14-2, Page 3*

2.8.a.4. The commenter notes that "the citation at the end of the sentence is incorrect. Instead of 2.8.b. it should be 2.8.a.2."

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

COMMENT C. *45-14-2, Page 6*

2.17. The commenter notes that there is a typographical error in the citation to 40 CFR Part 51.

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

COMMENT D. *45-14-7, Page 23*

7.1. The commenter states:

> *This subsection incorrectly defines "significant amounts" of nonattainment pollutants as the amount defined in subsection 2.74, i.e. the Prevention of Significant Deterioration (PSD) definition of that term. Regulation 19 already defines "significant" for nonattainment pollutants, and while the two rules may be coincidently the same in some respects, it would be legally inappropriate to define this term differently in Rule 14. Furthermore, a strict reading of this subsection as written would require that sources with significant increases of criteria pollutants in nonattainment areas would be required to meet all the requirements of Regulation 19 for all other regulated pollutants. (EPA requires that nonattainment regulations only address criteria pollutants, unlike PSD which addresses all regulated pollutants.)*

RESPONSE D. The DAQ agrees with the commenter and has changed the reference from subsection 2.74, to 45CSR19-2.65.

COMMENT E. *45-14-15, Page 29*

15.1.d. The commenter noted that they had "previously commented that the original language in this subsection was inconsistent with 51.166." The commenter acknowledges "that conclusion was incorrect" and notes that "the existing language is correct and should not be revised."

RESPONSE E. After the public notice period, the DAQ contacted the commenter for clarification. The commenter verbally indicated that upon further review it was determined that the language as proposed was consistent with 51.166. Therefore, the DAQ will not revise the proposed language.

COMMENT F. *45-14-25, Page 47*

25.4.a.2. The commenter notes that "the reference to the public participation requirements in section 28.5 appears to be incorrect", since "there is no such section."

RESPONSE F. The DAQ acknowledges that the commenter is correct, and has corrected the reference to refer to "section 17".

COMMENT G. *45-14-25, page 49*

The commenter suggested that the term "reviewing authority" be replaced with "Secretary".

RESPONSE G. The DAQ agrees and has made the appropriate revision.

COMMENT H: *45-19-2, pages 4-5*

19-2.16. Commenter states: "Citations are incorrect. The correct citations are:

> *"Clean unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, that is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to regulations approved by the Administrator in accordance with section **20**; or any emissions unit that has been designated by the Secretary as a Clean Unit, based on the criteria in subdivisions **21**.3.a through **21**.3.d, using a plan-approved permitting process; or any emissions units that has been designated as a Clean Unit pursuant to 45CSR14 §26.3.a through 26.3.d."*

RESPONSE H: The DAQ concurs, and has made the appropriate corrections.

COMMENT I: *45-19-20, page 33*

19-20.4.a. The commenter notes that "the last part of the sentence which states ". . . and become effective for the State in which the unit is located" can be removed since this would only apply to sources in West Virginia."

RESPONSE I: The DAQ agrees, and has deleted ". . . and become effective for the State in which the unit is located."

COMMENT J: *45-19-24, page 49*

19-24.1.b. The commenter notes that "this subsection only references Regulations 13 and 19 ", and questions whether it should also reference "Regulation 14".

RESPONSE J: The DAQ agrees that subdivision 24.1.b should reference Rule 14, and notes that the reference to Rule 19 is unnecessary, since the last part of the sentence says "to the extent applicable to any regulated pollutant not otherwise covered under this rule [45CSR19]." Therefore, the DAQ has changed the reference from 45CSR19 to 45CSR14.

COMMENT K: *Table 45-19A, page 51*

The commenter states: "The State may want to consider revising their regulations at this time to reflect the new 8 hour ozone nonattainment designations. These designations are all "Subpart I" areas and are not subject to the classification system that is outlined in Table 45-19A."

RESPONSE K: The DAQ agrees, and has updated Table-19A, to include Subpart I ozone nonattainment areas with marginal and moderate nonattainment areas, with significance defined as 40 tpy of VOC or NO_X. A new subdivision 2.42.a. has been added to the definition of "offset" which states: "In Subpart ozone nonattainment areas, greater than 1 to 1." In addition, the proposed subdivisions 2.42.a through 2.42.e have been renumbered to 2.42.b through 2.42.f.

IX. Commenter: West Virginia Manufacturers Association

COMMENT A: *NSR Reform*

The commenter "supports the adoption of EPA's NSR reform provisions by the DAQ as amendments to Rules 14 and 19, as fully as possible."

RESPONSE A: No response required.

COMMENT B: *Incorporation of WEPCO Provisions*

The commenter is "pleased that the DAQ has proposed revisions to cure the deficiencies in the current rules where inconsistencies appeared with regard to the physical and operational changes at electric utility steam generating

units ("EGU's")." The commenter notes that these provisions were originally prompted by the EPA in response to litigation involving the Wisconsin Electric Power Company (WEPCO) and are commonly referred to as the WEPCO rules. In the current DAQ rules, only Rule 14 contains the WEPCO provisions, while Rule 19 does not. The commenter notes that "with the proposed revisions, in which EPA's baseline actual emissions determination is added to both Rule 14 and 19, this inconsistency should be alleviated." Therefore, the commenter supports the proposed adoption of the baseline actual emissions determinations in Rules 14 and 19.

RESPONSE B: No response required.

COMMENT C: *Routine Maintenance, Repair and Replacement (RMRR)*
The commenter notes that as part of the NSR reform EPA promulgated changes to the RMRR exclusion to the federal PSD and non-attainment NSR rules. The commenter further notes that due to various petitions filed with the EPA in response to the new RMRR exclusion provisions, the EPA was ordered on December 24, 2003, to stay the new RMRR provisions pending a court review of the provisions. The commenter urges the DAQ to adopt the RMRR provisions as revised by EPA as soon as practicable, if and when the stay is lifted.

RESPONSE C: Please refer to response I.C.

COMMENT D: *Routine Maintenance, Repair and Replacement (RMRR)*
The commenter supports the retention of the current RMRR exclusion provision in the proposed State rules.

RESPONSE D: No response required.

COMMENT E: *45-14-2, page 9; 45-19-2.33.c.8, page 7*
The commenter notes that under the current state rules, the RMRR rule exclusions do not clearly apply to all sources. The commenter contends that the proposed revisions by DAQ cure this deficiency by revising Rule 14 subdivision 2.40.i and by adding paragraph 2.33.c.8 in Rule 19. The commenter supports these proposed changes as they provide consistency in the rules for both utilities and non-utilities.

RESPONSE E: No response required.

COMMENT F: *45-14-2.1, pages 1- 2; 45-19-2.1, pages 1-2*
14-2.1.a and 19-2.1.a. The commenter notes that "as part of its proposed revisions, the DAQ has modified the definition of "actual emissions" under Rule 19. Under subdivision 2.1.a. of Rule 19, the DAQ has proposed to revise the definition to state that actual emissions as of a particular date shall equal the average rate at which the unit actually emitted the pollutant

during a consecutive 24-month period, where the current rule provides a two (2) year period." However, the commenter notes that "the DAQ has not proposed this same revision for the definition of "actual emissions" under subdivision 2.1.a of Rule 14, thereby creating an inconsistency between the rules." Therefore, the commenter "recommends that the DAQ adopt the same proposed language for the definition of "actual emissions" for Rule 14 and 19."

RESPONSE F: Please refer to response I.D.

COMMENT G: *45-14-2.7, page 3; 45-19-2.4, page 2*
14-2.7.a and 19-2.4. The commenter notes that t"here is an inconsistency between Rule 14 and 19 in the current definition of "allowable emissions". Under Rule 14, the definition includes the standards set forth in 40 CFR Parts 60, 61, and 63. The definition of "allowable emissions" in Rule 19 does not reference 40 CFR Part 63. There is no reference to 40 CFR Part 63 in the federal counterparts to this definition." The commenter recommends that the rules should be revised so that Rule 14 and 19 are consistent with regard to this definition. The commenter further recommends that "the DAQ revise the existing definition of "allowable emissions" so that it is identical to the federal rule counterpart under both Rules 14 and 19."

RESPONSE G: Please refer to response I.E.

COMMENT H: *45-14-2, page 10*
2.43.a. The commenter notes that under the proposed definition of "major stationary source" in Rule 14, the DAQ has listed each of the regulated stationary source types within one paragraph. In order to more easily read the exhaustive list contained in the paragraph, the commenter recommends that the DAQ list the sources in table format, similar to the table following subdivision 2.43.f.

RESPONSE H: The DAQ agrees that a table format would make the rule easier to read, and has made the appropriate revision.

COMMENT I: *45-14-2.66, Page 17; 45-19-2.61, page*
14-2.66 and 19-2.61. The commenter notes that the "proposed definitions of "regulated pollutant" under Rules 14 and 19 are identical to the definitions of "regulated NSR pollutant" promulgated by the EPA in the NSR reforms." The commenter recommends that "the DAQ revise "regulated pollutant" to "regulated NSR pollutant" in order to be consistent with the federal regulations and to alleviate any confusion between these rules and other rules of the DAQ since this is a commonly used term."

RESPONSE I: Please refer to response I.F.

COMMENT J: *45-14-21, pages 35 - 36*

The commenter notes that "under the proposed revisions to Section 21 of Rule 14, the provisions of 45 CSR 13 ("Rule 13") and of Rule 19 would not apply to sources which are required to obtain a permit under Rule 14, and the source would only be required to obtain one single permit." The commenter contends that "while this proposal may be administratively more efficient, there are no provisions under Rule 14 for updating a Rule 14 permit." As such, under the proposed rules, it is unclear to the commenter as to how to update a Rule 14 permit for a minor or administrative modification. The commenter notes that "only Rule 13 contains provisions on how to obtain an administrative update or minor modification to a major source permit." The commenter "suggests that in addition to the proposed revisions to this section and in order to eliminate any confusion, the DAQ should provide a cross reference to use the provisions in Rule 13 for administrative updates and minor modifications for a major source permit."

RESPONSE J: Please refer to response I.H.

COMMENT K: *45-14-13, Page 27*

13.6. The commenter notes that under the Federal Class I requirement provisions set forth in Rule 14, the DAQ has proposed a provision allowing for a Class I variance. The commenter commends the DAQ for this proposed revision. The commenter notes, however, there is no definition for "minor source baseline concentration", and urges that the text be amended to clarify these items.

RESPONSE K: Please refer to response I.J.

COMMENT L: *45-14-19, page 34*

14-19.4. The commenter notes that "as part of the provisions regarding the permit transfer, cancellation and responsibility section under Rules 14 and 19, the DAQ has proposed to add a section providing that any owner or operator who constructs, modifies or relocates any stationary source not in accordance with the application submitted to DAQ shall be subject to enforcement action." The commenter does not support this proposed revision, as the commenter believes "information included in an application should not be the subject of such enforcement if it is not contained specifically within the permit." The commenter contends that this "proposal would subject the permittee to an unreasonable risk", and that "enforcement action should only be based upon permit provisions, not information only contained within an application." The commenter contends that "such "incorporation by reference" is not a clear, fair or acceptable means of structuring a permit, and that the permit itself should contain in specific terms those conditions for which the permittee is responsible without reference to the application." The commenter contends that "this approach

of incorporation has led to numerous problems of both compliance and interpretation in the past, and should be avoided in the future."

RESPONSE L: Please refer to response I.K.

It should also be noted that the commenter also "supports the adoption of EPA's NSR reform provisions by the DAQ as amendments to Rules 14 and 19, as fully as possible." Refer to comment II.A.

COMMENT M: *45-14-19.6, page 34; 45-19-17.3.b, page 29*

14-19.6 and 19-17.3.b. The commenter notes that "in Rules 14 and 19 a provision has been proposed that states that a source that has not operated at least five-hundred (500) hours in one 12-month period within the previous five (5)-year period may be considered permanently shutdown, which could subject such source to permit modification or revocation and also NSPS implications." The commenter notes that "this proposed section is also in 45 C.S.R. 13", but contends that it "is not consistent with the EPA's policy for restarting major sources." The commenter notes that "Federal policy looks back for at least two years at the facts surrounding any shutdown, the intention of the owner, and any reliance by the State regarding emissions inventory." In addition, the commenter contends that "this provision is in violation of state law which mandates that any state rule shall not be more stringent than its federal counterpart."

Furthermore, the commenter states: "it is unclear from proposed language whether 500 hours must be determined consecutively or cumulatively in one year. In some instances, a major stationary source might be inoperable for periods of time due to a major maintenance project in excess of 500 hours, or idled temporarily due to a business downturn, and should not be considered permanently shutdown." The commenter also contends that "such rule may also subject temporary, emergency, or other less-used sources to permit modification or revocation, which would subject the owner or operator of the source to possible permit revocation and/or the costs and effort of reapplication or defense of its current permit for a source which is still being utilized." Therefore, the commenter "urges the DAQ to delete the proposed revisions." The commenter also recommends that "at a minimum, no presumption of permanent shutdown should attach for at least two consecutive years of non-operation, unless the operator has in fact notified the DAQ that a unit has been permanently retired."

RESPONSE M: Please refer to response I.I.