

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES x NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: July 29, 1994 TIME: 9:00 am

LOCATION OF PUBLIC HEARING: WVDEP - Office of Air Quality

1558 Washington Street East

Charleston WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH x

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Air Quality

1558 Washington Street E

Charleston WV 25311

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

9.00

45CSR14

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

STATEMENT OF CIRCUMSTANCE

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 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.

It is the intent of the Director 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.

The promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under the Clean Air Act, as amended.

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: Office of Air Quality

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

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

2. Explanation of above estimates: 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 promulgated by the Legislature during the 1994 Legislative Session.

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 a stationary source within a designated attainment or unclassified area of the State of West Virginia. Such construction, or relocation without such a permit is a violation of this rule.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

Based upon past and current permitting activity up to 3 man-years of effort may be required to process permit applications for major sources in any particular year. At the 3 man year level program costs would be approximately \$150,000. The proposed rule revisions should not change this economic impact. The funding for this program will come from fees collected pursuant to 45CSR30 authorized by the Legislature during the 1994 session.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

The provisions of this regulation which are generally applicable nationally could impact upon the siting of proposed new major facilities and the permit application and emission control costs for such facilities. Permit application fees can range up to \$14,500. The proposed rule amendments should not significantly change current potential economic impacts.

C. Economic impact on citizens/public at large.

Proposed rule revisions will have minimal impact.

Date: June 21, 1994

Signature of agency head or authorized representative:


G. Dale Farley
Chief, Office of Air Quality

45CSR14

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

SUMMARY

45CSR14 was initially promulgated by the Air Pollution Control Commission on May 15, 1984, and became effective on June 14, 1984. The purpose of the rule is to register and evaluate proposed new major stationary sources or major modifications to determine whether such activity would result in a significant deterioration of air quality levels in areas which have either been designated as attaining the National Ambient Air Quality Standards or are unclassifiable.

The last amendments to this rule became effective on July 7, 1993, primarily as a result of USEPA's promulgation of nitrogen oxide increments, changes to definitions, permit application procedures, and time changes for the permit review process to six months.

45CSR14 is being revised to reflect USEPA's changes to 40 CFR Section 51.166. Changes include: maximum allowable emissions increases for particulate matter; changes which clarify PSD preconstruction review requirements of Title I of the 1990 Clean Air Act Amendments to air pollution abatement projects undertaken at electric utility steam generating units; and changes in response to a petition by the West Virginia Manufacturers Association to remove hazardous air pollutants from PSD-review in accordance with section 112(b)(6) of the 1990 Clean Air Act Amendments. Definitions in section 2 have been alphabetized. Changes also reflect enactment of DEP Code. Changes are indicated by underline and strikeout.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

FILED

JUN 21 4 11 PM '94

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§45-14-1. General.

1.1. Scope. -- To insure 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 is the intent of the ~~commission~~ Director 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.

The purpose of this regulation 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 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 regulation rule.

1.2. Authority. -- W. Va. Code ~~§16-20-5~~ §§22-5-1 et seq.

1.3. Filing Date. -- ~~July-7, 1993~~

1.4. Effective Date. -- ~~July-7, 1993~~

1.5. Type. -- ~~This regulation is a legislative rule as defined in W. Va. Code Chapter -29A, -Article-2.~~ Incorporation by reference - Federal Counterpart Regulation. - Not Applicable

1.6. Determination of Stringency. -- Federal Counterpart Regulation. 45CSR14 was first adopted by the Air Pollution Control Commission in 1984 and as amended prior to June 10, 1994 was based upon and closely conformed to counterpart federal (USEPA) regulations for Prevention of Significant Deterioration (PSD). The proposed amendments to the rule conform to revisions by USEPA in federal counterpart rules as published in the Federal Register on June 3, 1993 (Vol. 58, No. 195) and July 21, 1993 (Vol. 57, No. 140) and incorporates changes to exclude most hazardous air pollutants from the requirements of this rule in accordance with section 112(b)(6) of the 1990 Clean Air Act Amendments, and also conform the rule to changes to the authorizing statute. The amendments are no more or no less stringent than requirements in the federal counterpart rules.

1.7. Constitutional Takings Provision. -- The Director has determined that this rule will not result in a constitutional taking of real property.

\$45-14-2. Definitions.

2.1.2-23- "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as described below:

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2)-year period which precedes the particular date and which is representative of normal source operation. The ~~chief~~Director may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

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.

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 the physical or operational change following such a period to be more representative of normal source operations.

2.2.2-35- "Administrator" means the Administrator of the United States Environmental Protection Agency.

2.3.2-27- "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

2.4.2-29- "Air pollution", or "Statutory air pollution", means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property ~~has the meaning ascribed to it in Section Two of the West Virginia Code 16-20, as amended.~~

2.5.2-18- "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 ~~chief~~Director

which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards as set forth in 40 CFR Parts 60, ~~and~~ 61, and 63;
- b. The applicable State of West Virginia emissions limitations or permit conditions, including those with a future compliance date; or
- c. The applicable federally enforceable emissions limitations or permit conditions, including those with a future compliance date.

2.6.2-17: "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 $\mu\text{g}/\text{m}^3$ (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 rescinds the corresponding minor source baseline data in accordance with paragraph 2.32.b.

2.7.2-15: "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 baseline date is established and includes:

- 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.

- 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):

- A. actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

- B. actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

2.8.2-13: "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.

2.9.2-14: "Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction

for each regulated pollutant which would be emitted from any proposed major stationary source or major modification which the ~~Chief of Air Quality~~ Director, 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 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 ~~chief~~ Director. If the ~~chief~~ Director 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.

2.10.2-8- "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).

2.11.2-44- "Chief of the Office of Air Quality" or "Chief" means the ~~chief~~ principal administrative officer of the Office of Air Quality or ~~his or her~~ other designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §§22-1-1 et seq.

2.12. "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. "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.

2.14.2-11- "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:

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

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.

2.15.2-30- [RESERVED] ~~"Commission" means the West Virginia Air Pollution Control Commission-~~

2.16.2-24- "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 ~~chief~~ Director from requesting or accepting any additional information.

2.17.2-10- "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.

2.18.2-31- "Director" means the Director of the Division of Environmental Protection or ~~his or her designated representatives~~ such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

2.19.2-45- "Division of Environmental Protection" or "DEP" means the Division of Environmental Protection as defined in ~~that division of the West Virginia Department of Commerce, Labor and Environmental Resources which is created by the provisions of W. Va. Code §§22-1-1 et seq.~~

2.20. "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.

2.21.2-28- "Emission" ~~refers to~~ means the release, escape, or discharge of air pollutants into the air.

2.22.2-9- "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated pollutant.

2.23.2-26- "Federal Land Manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

2.24.2-19- "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, ~~and 61~~ and 63, rules and regulations of the approved State

Implementation Plan of the State of West Virginia, any permit requirements established pursuant to 40 CFR 52.21 or this ~~regulation~~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.

~~2.25.2-22-~~ "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

~~2.26.2-21-~~ "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.

~~2.27.2-3-~~ "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 of any regulated pollutant. However, the following actions do not constitute a physical change or change in the method of operation:

- a. Routine maintenance, repair, and replacement.
- 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.
- c. Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act.
- d. Use of fuel generated from municipal solid waste as an alternative fuel at a steam generating unit.
- e. Use of an alternative fuel or raw material, provided that prior to January 6, 1975, the source is capable of accommodating such alternative fuel use, unless such change 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 ~~regulation~~rule of the ~~commission~~Director.
- 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 ~~regulation~~rule of the ~~commission~~Director.
- 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 ~~regulation~~rule of the ~~commission~~Director.
- h. Any change in ownership at a stationary source.

i. The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except;

A. 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

B. 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.

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

A. The State Implementation Plan; and

B. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

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 pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

l. The reactivation of a very clean coal-fired electric utility steam generating unit.

2.28.2-4: "Major modification for ozone" means a major modification for volatile organic compounds.

2.29.2-40: "Major source baseline date" means:

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

b. in the case of nitrogen dioxide, February 8, 1988.

2.30.2-1: "Major stationary source" means:

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

b. 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 ~~of this regulation~~; or

c. any physical change at a stationary source if the change itself would constitute a major stationary source.

Table 1
STATIONARY SOURCES OF AIR
POLLUTANTS

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

2.31.2-2: "Major stationary source for ozone" means a major stationary source of volatile organic compounds.

2.32.2-16: "Minor source baseline date" means the earliest date after the trigger date, on which the first complete application under 40 CFR 52.21 is submitted by a major stationary source or major modification subject to the requirements of 40 CFR 52.21 or the date of the first complete application required by this regulation rule, whichever is earlier. ~~The minor source baseline date is established for each pollutant for which increments or other equivalent measures have been established if:~~

a. The minor source baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

a- A. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107 of the Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21 or this regulationrule; and

b- B. 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.

b. 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 PM₁₀ increments, except that the Director may rescind any such minor source baseline date where it can be shown to the Director'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 PM₁₀ emissions.

2.33.2-12- "Necessary preconstruction approvals or permits" means, for the purposes of this regulationrule, those permits or approvals required under Federal air quality control laws and regulations and air quality control laws and regulationsrules of the State of West Virginia.

2.34.2-5- "Net emissions increase" means the amount of emissions by which the sum of the following exceeds zero:

a. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

A. 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. An increase or decrease in actual emissions is creditable only if the two following conditions are satisfied:

(a) 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 chief Director in issuing a permit pursuant to this regulation rule and such permit is in effect on the date on which the increase in emissions from the particular change occurs.

(b) 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 PM₁₀ emissions can be used to evaluate the net emissions increase for PM₁₀.

C. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

D. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable and is enforceable by the ~~Chief of Air Quality~~ Director at and after the time that the actual construction on the particular change begins, and

(c) 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.

E. 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.

2.35.2-38- "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method described in Appendix J of 40 CFR 50.

2.36. "Particulate matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.37.2-32- "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 other state or country, and any firm, partnership, or association of whatever nature.

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:

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;

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;

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.

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

2.39.2-6- "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 chief Director in any permit and/or consent order issued by the United States Environmental Protection Agency or by the chief Director. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.40. "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:

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 emissions inventory at the time of enactment;

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;

c. Is equipped with low-NO_x burners prior to the time of commencement of operations following reactivation ; and

d. Is otherwise in compliance with the requirements of the Clean Air Act.

2.41.2-34: "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 ~~regulations~~ rules promulgated thereunder, except as provided in paragraph 2.46.b., and the following pollutants:

- Carbon Monoxide
- Nitrogen Oxides
- Particulate Matter
- PM₁₀
- Sulfur Dioxide
- Ozone (volatile organic compounds)
- Lead
- Asbestos
- Beryllium
- Mercury
- Vinyl Chloride
- Fluorides
- Sulfuric Acid Mist
- Hydrogen Sulfide (H₂S)
- Total Reduced Sulfur Compounds (including H₂S)
- Reduced Sulfur Compounds (including H₂S)
- 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 SO₂ and HCl)

2.42.2-33. "Relocate" or "Relocation" means the physical movement of a source outside its existing plant boundaries.

2.43. "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.

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.

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

2.44. "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 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 shall:

a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the Director or USEPA, and compliance plans under Title IV of the Clean Air Act; and

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.

2.45.2-20: "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 ~~section~~ 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.

2.46.2-25- "Significant" means:

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 and Emissions Rate

- Carbon monoxide: 100 tons per year (TPY)
- Nitrogen oxides: 40 TPY
- Sulfur dioxide: 40 TPY
- Particulate matter: 25 TPY
- PM₁₀: 15 TPY
- Ozone: 40 TPY of volatile organic compounds
- Lead: 0.6 TPY
- Asbestos: 0.007 TPY
- Beryllium: 0.0004 TPY
- Mercury: 0.1 TPY
- Vinyl chloride: 1 TPY
- Fluorides: 3 TPY
- Sulfuric acid mist: 7 TPY
- Hydrogen sulfide (H₂S): 10 TPY
- Total reduced sulfur (including H₂S): 10 TPY
- Reduced sulfur compounds (including H₂S): 10 TPY
- Municipal waste combustor organics (as total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans: 3.5×10^{-6} TPY
- Municipal waste combustor metals (as particulate matter): 15 TPY
- Municipal waste combustor acid gases (as the sum of SO₂ and HCl): 40 TPY

b. in reference to a net emissions increase or the potential of a source to emit a pollutant subject to a regulation rule for which the ~~commission~~ Director has promulgated an emission or air quality standard that is not listed in paragraph 2.46.a.2-25-a-of-this-regulation, 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.;

c. any emissions rate 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 $1 \mu\text{g}/\text{m}^3$ (twenty-four (24) hour average).

2.47.2-39- "Significant impact" means an increase in the ambient air concentration for a particular pollutant as follows:

		Averaging time (hours)			
Annual		24	8	3	1
Pollutant:					
SO ₂	1.0 µg/m ³	5.0 µg/m ³		25.0 µg/m ³	
TSP	1.0 µg/m ³	5.0 µg/m ³			
PM ₁₀	1.0 µg/m ³	5.0 µg/m ³			
NO ₂	1.0 µg/m ³				
CO			0.5 mg/m ³		2.0 mg/m ³

2.48.2-7- "Source" or "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.49.2-37- "TSP" or "Total suspended particulate matter" means particulate matter as measured by the method described in Appendix B of 40 CFR 50.

2.50. "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 during and after the project is terminated.

2.51.2-41- "Trigger date" means:

- a. in the case of particulate matter and sulfur dioxide, August 7, 1977, and
- b. in the case of nitrogen dioxide, February 8, 1988.

2.52.-2-43- "USEPA" means the United States Environmental Protection Agency.

2.53.2-42- "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)

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- 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 ~~commission~~ Director.

§45-14-3. Ambient Air Quality Ceilings.

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

Pollutant	Maximum Allowable Increase ($\mu\text{g}/\text{m}^3$)
Class I	
Particulate matter:	
TSPPM_{10} , Annual geometric mean	54
TSPPM_{10} , 24-hour maximum	108
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:	
TSPPM_{10} , Annual geometric mean	1917
TSPPM_{10} , 24-hour maximum	3730
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III

Particulate matter:

TSPPM ₁₀ , Annual geometric mean	3734
TSPPM ₁₀ , 24-hour maximum	<u>7560</u>
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

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

- a. by the ~~commission~~ Director; or
- b. by the United States Environmental Protection Agency.

§45-14-4. Area Classification.

4.1. Dolly Sods Wilderness Area and Otter Creek Wilderness Area are designated as Class I.

4.2. 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.

4.3. The remainder of the State of West Virginia is designated as Class II.

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

5.1. 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 or dispersion technique existed before December 31, 1970.

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

6.1. 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 ~~regulation~~ rule in any area designated as attainment or unclassifiable under section 107 of the Clean Air Act, without notifying the

chiefDirector of such intent and obtaining prior to commencement of construction, modification, or relocation a permit(s) to so construct, modify, or relocate the major stationary source or major modification as herein provided.

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

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;

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

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;

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

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. 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 ~~and regulations~~ of the ~~commission~~ Director, the permit application, and any permit issued pursuant to this regulationrule.

6.4. 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 chiefDirector 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 chiefDirector received all required information.

6.5. 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 chiefDirector shall issue such a permit unless the chiefDirector determines that the proposed major stationary source or major modification has not satisfied the requirements of this regulationrule, 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 regulationrule, in which case the chiefDirector shall issue an order for the prevention of such construction, modification, or relocation.

6.6. When the chiefDirector denies a permit application for the proposed construction or relocation of any major stationary source or major modification, the order shall set forth the chief'sDirector's reasons with reasonable specificity.

6.7. The chiefDirector 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. Requirements Relating to Control Technology.

7.1. Any person proposing to construct, or relocate a major stationary source or major modification shall meet each applicable emissions limitation promulgated by the commission-Director and any other federally enforceable emissions limitation.

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

7.3. Any person proposing a major modification of a stationary source shall apply best available control technology for each regulated 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. For any proposed construction or relocation 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. Requirements Relating to the Source's Impact on Air Quality.

8.1. 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:

- a. Any National or West Virginia Ambient Air Quality Standard; or
- b. Any applicable maximum allowable increase over the baseline concentration in any area.

§45-14-9. Requirements for Air Quality Models.

9.1. All estimates of ambient concentrations required under section 8. ~~of this regulation~~ 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), ~~and~~ Supplement A (1987) and Supplement B (1993).

9.2. Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986), ~~and~~ Supplement A (1987) and Supplement B (1993) 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.

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

10.1. 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. 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. 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 ~~chief~~Director determines is necessary for the ~~chief~~Director to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

10.4. 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. 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 chiefDirector 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. 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 chiefDirector 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. Operation of monitoring stations required by this section 10. shall meet the requirements of Appendix B of 40 CFR 58 during the operation of the monitoring stations.

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

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

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

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. Additional Requirements and Variances for Sources Impacting Federal Class I Areas.

12.1. The chiefDirector 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.

12.2. The Federal Land Manager of the affected Class I area may present to the chiefDirector during the public review process described in section 16. ~~of this regulation~~ 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 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 chiefDirector concurs with such demonstration, the chiefDirector shall deny the permit to construct.

12.3. An applicant for a permit pursuant to this ~~regulation~~rule shall be allowed the Class I variances as provided in 40 CFR 52.21 (p) (5), (6), (7), and (8) as contained in the Code of Federal Regulations on July 1, ~~1990~~1993, provided, that all requirements of said 40 CFR 52.21 (p) (5), (6), (7), and (8) are met and written notification of variance in accordance with said section(s) is provided to the chiefDirector.

\$45-14-13. Procedures for Sources Employing Innovative Control Technology.

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

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;

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. ~~of this regulation~~ by a date specified by the chiefDirector.

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

d. Before the date specified in subsection 13.4. ~~of this regulation~~, the source or modification would ~~not~~neither:

A. cause or contribute to any violation of an applicable National Ambient Air Quality Standard; ~~or~~nor

B. impact any area where an applicable increment is known to be violated.

e. The provisions of 40 CFR 52.21(p) (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

13.2. The chiefDirector 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. The chiefDirector, 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. The chiefDirector shall specify a date by which the source or modification must meet the requirements and conditions of subsection 13.1. ~~of this regulation.~~ 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. The chiefDirector shall withdraw any approval to employ a system of innovative control technology made under this section 13. ~~of the regulation if:~~

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

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

c. The chiefDirector 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. 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. ~~of this regulation~~, the chiefDirector 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. Exclusions From Increment Consumption.

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

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 regulationrule) over the emissions from such sources before the effective date of such an order;

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;

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

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.

14.2. 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. ~~of this regulation~~ refers or the plan to which paragraph 14.1.b. ~~of this regulation~~ 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. Procedures for Exemptions From Specific Sections of This Regulation Rule.

15.1. 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 chief Director for an exemption from the requirements of sections 7. through 11. ~~of this regulation~~:

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

15.3. Any person proposing to relocate a source or modification that is a portable stationary source which has previously received a permit under this regulation rule may petition the chief Director for an exemption from the requirements of sections 7. through 11. ~~of this regulation~~. The chief Director shall grant this exemption if the following conditions are met:

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

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

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

d. The source identifies the proposed new location and the probable duration of operation at the new location.

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
- Any Other Stationary Source Category Which, as of November 15, 1990, is Being Regulated under section 110 or 111 of the Clean Air Act.

15.4. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the chiefDirector for an exemption from the requirements of sections 8. through 11. ~~of this regulation~~ with respect to a particular pollutant and the chiefDirector 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 impact no Class I area and no area where an applicable increment is known to be violated.

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

15.6. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the chiefDirector for an exemption from the requirements of subsection 10.5. ~~of this regulation~~ with respect to a particular pollutant if:

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 ~~of this regulation~~; or

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 ~~of this regulation~~; or

c. The applicant's request is for any pollutant which is not listed in Table 3 ~~of this regulation~~.

15.7. 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 chiefDirector for an exemption from the requirements of subsection 10.5. ~~of this regulation~~ that the continuous air monitoring data be representative of the year preceding the receipt of the application. The chiefDirector may grant such an exemption if the following conditions are met:

a. The proposed major stationary source or major modification for volatile organic compounds satisfies all conditions of 40 CFR Part 51, Appendix S, section IV.

b. The continuous air monitoring data for ozone must be gathered for a period of one (1) year and shall represent the year following the issuance of the permit, except that, if the chiefDirector determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

Table 3.

DE MINIMIS AIR QUALITY IMPACTS

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

15.8. Any person proposing to construct or relocate a major stationary source or make a major modification where such major stationary source or major modification has a net emissions increase less than one hundred (100) tons per year of volatile organic compounds, may petition the chiefDirector for an exemption from ozone monitoring required by section 10. ~~of this regulation.~~

§45-14-16. Public Review Procedures.

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

16.2. The chiefDirector 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 ~~regulations~~ rules pursuant thereto), a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

16.3. The chief Director 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. The chief Director shall send a copy of the advertisement to the applicant, to USEPA, 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. Public comments submitted within thirty (30) days after the chief's Director'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 chief Director before making a final decision on the approvability of the application. The chief Director shall make copies of all comments available for public inspection in the same locations where the chief Director made available preconstruction information relating to the proposed source or modification.

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

16.7. The chief Director 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 chief Director made available preconstruction information and public comments relating to the proposed source or modification.

§45-14-17. Public Meetings.

17.1. Public meetings to receive comments on permit applications shall be held when the chief Director 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. The chief Director or the chief's Director's designee shall preside over such meetings and insure 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. At a reasonable time prior to such meetings, the chiefDirector shall provide appropriate information to news media in the area where the proposed source or modification is to be located.

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

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

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

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

18.2. The chiefDirector shall ~~cancel or suspend~~ or revoke a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the chiefDirector, at the chief'sDirector'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 chief'sDirector's request.

18.3. The chiefDirector may ~~cancel or 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.

18.4. 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 or the ~~State of West Virginia Chief of the Office of Air Quality~~ Director, 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 regulationrule as though construction had not yet commenced on the source or modification.

§45-14-19. Disposition of Permits.

19.1. In the event that the ~~commission~~ Director promulgates changes to this regulationrule or in the event of a redesignation of an attainment or non-attainment area (in accordance with section 107 of the Clean Air Act) prior to final disposition

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of a permit, the ~~chief~~Director shall make final disposition of the permit application in accordance with such newly promulgated standards or redesignation.

\$45-14-20. Conflict with Other Permitting Rules.

20.1. For sources subject to the permitting requirements of this ~~regulation~~rule, the provisions of 45CSR13 - "Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation" do not apply, provided, however, that the base permit application fee of \$1,000 under paragraph 3.4.a. of 45CSR22 shall apply to such sources in addition to other applicable fees.

\$45-14-21. Severability.

21.1. The provisions of this ~~regulation~~rule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this ~~regulation~~rule or their application to any persons or circumstances.