

9.80 w/o Comments

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-

- 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.
- 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.

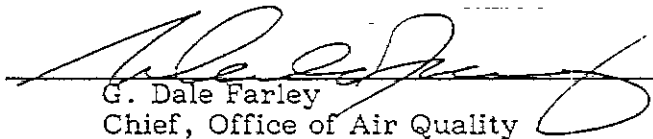
The provisions of this regulation which are generally applicable nationally could impact upon the siting of proposed new major facilities and the permit application and emission control costs for such facilities. Permit application fees can range up to \$14,500. The proposed rule amendments should not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

DATE: August 15, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: G. DALE FARLEY
CHIEF, OFFICE OF AIR QUALITY
DIVISION OF ENVIRONMENTAL PROTECTION

LEGISLATIVE RULE TITLE: Series 14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

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

2. a. Date filed in State Register with Notice of Hearing:

June 23, 1994

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

Class I legal advertisement filed in a newspaper published in each of
the Air Quality Control Regions of West Virginia.

Office of Air Quality mailing list.

c. Date of hearing(s): July 29, 1994

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 15, 1994

f. Name and phone number of agency person to contact for additional information:

G. Dale Farley, Chief

Office of Air Quality (Phone: 558-2275)

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: _____ 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 _____

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.

TITLE 45
LEGISLATIVE RULE
BUREAU OF ENVIRONMENT
DIVISION 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. -- 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. 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.~~

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, 1992 (Vol. 57, No. 140) and

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

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 minor source 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 representative~~ 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 by a stationary source, 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 of the commission.~~

A. 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 after January 6, 1975;

B. 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.

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.a.2.40. "Major source baseline date" means:

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

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

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:

and A. In the case of particulate matter and sulfur dioxide, August 7, 1977,

B. In the case of nitrogen dioxide, February 8, 1988.

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

A. 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 for the pollutant on the date of its complete application under 40 CFR 52.21 or this rule; and

B. 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.

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 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.

2.30.2.1. "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. ~~[RESERVED]"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 a major modification subject to the requirements of 40 CFR 52.21 or the date of the first complete application required by this regulation, 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 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 regulation; and~~

~~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.~~

~~2.33.2-12.~~ "Necessary preconstruction approvals or permits" means, for the purposes of this ~~regulation~~rule, those permits or approvals required under Federal air quality control laws and regulations and air quality control laws and ~~regulations~~rules 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 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. "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, or by a test method specified in any rule of the Director 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. "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 State or Federal regulatory authorities, 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, 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 ~~emission~~ 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. notwithstanding paragraph 2.46.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 µg/m³ (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/m³	5.0 µg/m³			
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. ~~[RESERVED]"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)
- 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 Increments and 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

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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	7560
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 existed or dispersion technique existed was implemented 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 ~~chief~~Director of such intent and obtaining prior to ~~commencement of beginning actual~~beginning actual construction, or modification (as defined by subsection 2.8), ~~or relocation~~ 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, as amended, for any pollutant which the source or modification would emit in significant amounts (as defined by subsection 2.46), 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. The owner or operator of the source shall file with the ~~chief~~Director a timely and complete permit application containing sufficient information as, in the judgment of the ~~chief~~Director, will enable the ~~chief~~Director 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 ~~regulation~~rule. 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 ~~regulation~~rule.

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

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

6.7. The ~~chief~~Director 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~~ applicable emissions standard or standard of performance under 40 CFR 60, 61, and 63.

7.2. Any person proposing to construct ~~or relocate~~ a new 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.

8.2. A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard 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.

§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 chiefDirector determines is necessary for the chiefDirector 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 ~~chief~~Director 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 ~~chief~~Director 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 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 ~~chief~~Director concurs with such demonstration, the ~~chief~~Director 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~~ 51.166 (p) (4), (5), (6), and (7), ~~and (8)~~ as contained in the Code of Federal Regulations on July 1, ~~1990~~1994, provided, that all requirements of said 40 CFR ~~52.21~~ 51.166 (p) (4), (5), (6), and (7), ~~and (8)~~ are met and written notification of variance in accordance with said section(s) is provided to the ~~chief~~Director.

§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 ~~chief~~Director to ~~employ~~ 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:

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~~ 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. 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 ~~chief~~Director 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 ~~regulation~~rule) 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~~ Requirements 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~~ subsections 7.2, 7.3, and 7.4 and sections 8.10, and 11.

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~~ 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 subsections 7.2, 7.3, and 7.4 and sections 8.10, and 11. ~~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 All Other Stationary Source Categoryies Which, as of November 15, 1990 is Being Regulated under section regulated by a standard promulgated under 110 or §111 or §112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category.

15.4. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the chief Director for an exemption from the requirements of sections 8. through 11. ~~of this regulation~~ with respect to a particular pollutant and the chief Director 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~~ section 10 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; ~~or of this regulation.~~

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. 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 shall ~~may~~ grant such an exemption if the following conditions are met:

a. ~~The~~ 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 chief 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 chief for an exemption from ozone monitoring required by section 10. of this regulation. Any complete permit application pending final disposition by the Director 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. concerning the maximum allowable increase for total suspended particulate matter which is applicable prior to the effective date of this rule.~~

§45-14-16. Public Review Procedures.

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

16.2. The ~~chief~~Director 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 chiefDirector 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'sDirector'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 chiefDirector before making a final decision on the approvability of the application. The chiefDirector shall make copies of all comments available for public inspection in the same locations where the chiefDirector made available preconstruction information relating to the proposed source or modification.

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

16.7. The chiefDirector 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 chiefDirector 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 chiefDirector 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 chiefDirector or the chief'sDirector'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 ~~regulation~~rule. 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 chiefDirector'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 chiefDirector'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 ~~regulation~~rule as though construction had not yet commenced on the source or modification.

§45-14-19. Disposition of Permits.

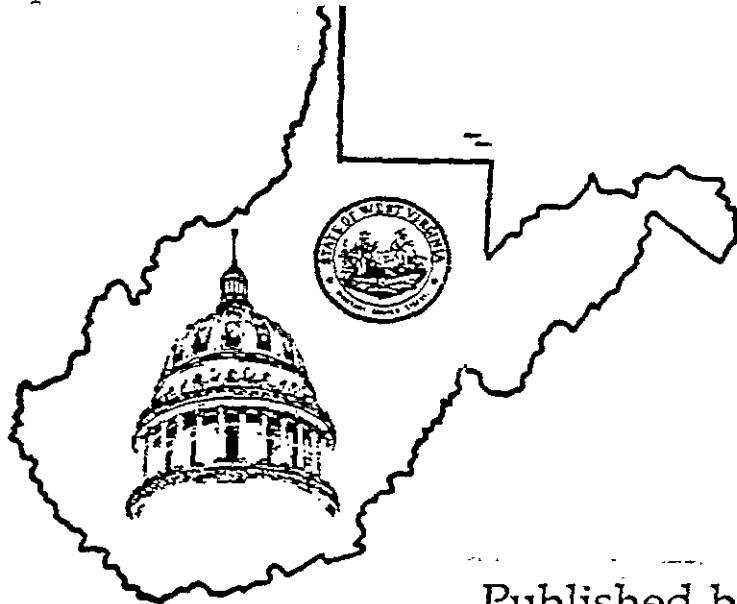
19.1. In the event that the ~~commission~~Director promulgates changes to this ~~regulation~~rule or in the event of a redesignation of an attainment or non-attainment area (in accordance with section 107 of the Clean Air Act) prior to final disposition of a permit, the chiefDirector shall make final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



WEST VIRGINIA REGISTER

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Administrative Law Division

*Judy Cooper
Director*

*Missy Phalen
Pam Reece
Administrative Assistants*

*Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770*

(304)558-6000

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SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

LEGISLATIVE

JUL 21 4 21 PM '94

OFFICE OF THE SECRETARY OF STATE

Form #1

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

JUL 21 4 13 PM '94

OFFICE OF THE 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 ☒ 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: WDEP - Office of Air Quality

1558 Washington Street East

Charleston WV 25311

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☒ BOTH ☐

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

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 ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 15

TITLE OF RULE BEING AMENDED: Emission Standards for Hazardous Air Pollutants Pursuant to 40 C.F.R. Part 61

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: WDEP - Office of Air Quality

1558 Washington Street East

Charleston WV 25311

COMMENTS LIMITED TO: ORAL ☐ WRITTEN ☒ BOTH ☐

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CHRONOLOGICAL INDEX VOLUME XI ISSUE 25

Proposed Rules Filed for Public Hearing

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
Env Protection Air Quality (45-14)	Permits for Construction & Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration Legislative	§22-5-1	July 29, 1994, 9:00 a.m. WVDEP - Office of Air Quality 1558 Washington Street, E Charleston, WV 25311 Written Comments to: Office of Air Quality 1558 Washington Street E Charleston, WV 25311
Env Protection Air Quality (45-15)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61 Legislative	§22-5-1	July 29, 1994, 9:00 a.m. Hearing & Comments Same as Above
Env Protection Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	§22-5-1	July 29, 1994, 9:00 a.m. Hearing & Comments Same as Above
Env Protection Air Quality (45-19)	Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants & Emission Trading for Intrasource Pollutants Legislative	§22-5-1	July 29, 1994, 9:00 a.m. Hearing & Comments Same as Above
Env Protection Air Quality (45-33)	Acid Rain Provisions & Permits Legislative	§22-5-1	July 29, 1994, 9:00 a.m. Hearing & Comments Same as Above
Env Protection Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63 Legislative	§22-5-1	July 29, 1994, 9:00 a.m. Hearing & Comments Same as Above



WEST VIRGINIA REGISTER

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Volume XI

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Bldg. I, Suite 157K
1900 Kanawha Blvd. E.
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FILED

JUN 23 2 51 PM '94

NOTICE OF PUBLIC HEARING

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrastate Pollutants (Amendment).
- 45CSR23 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

OTHER

FILED

JUN 23 2 59 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PUBLIC NOTICE OF HEARING
G & L Coal Company, Inc.
PERMIT NUMBER S-3035-87

A hearing has been scheduled to be held on August 18, 1994, in the West Virginia Division of Environmental Protection Conference Room located at No. 10 McDunkin Road, Nitro, West Virginia, beginning at 10:00 AM for G & L Coal Company, Inc.

The purpose of this hearing is to show cause why G & L Coal Company, Inc., Permit Number S-3035-87 operating in the Valley District of Fayette County, should not be revoked and associated securities forfeited by David C. Callaghan, Director of the Division of Environmental Protection.

SHOW CAUSE #529

FILED

JUN 23 2 51 PM '94

NOTICE OF PUBLIC HEARING

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
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- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Library of the Office of Air Quality located at the address below.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

The Wheeling News-Register and
Intelligencer
Legal Ad Department
1500 Main Street
Wheeling, WV, 26003

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,


Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor
John M. Ranson
Cabinet Secretary

David C. Callaghan
Director
Ann A. Spaner
Deputy Director

June 23, 1994

Mr. Tim Carroll
Office of Air Quality
Northern Panhandle Regional Office
1911 Warwood Avenue
Wheeling, West Virginia 26003

Dear Mr. Carroll:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, Northern Panhandle Regional Office, 1911 Warwood Avenue, Wheeling, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

The Parkersburg News
Legal Ad Department
519 Juliana Street
Parkersburg, WV 26102

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Ms. Dorothy Chittum
Librarian
Parkersburg/Wood County Public Library
3100 Emerson Avenue
Parkersburg, West Virginia 26104

Dear Ms. Chittum:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

The Herald-Dispatch
Legal Ad Department
P. O. Box 2017
Huntington, WV 25720

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Mr. Matt Onion
Cabell County Public Library
455 9th Street Plaza
Huntington, West Virginia 25701

Dear Mr. Onion:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Cabell County Public Library, 455 9th Street Plaza, Huntington, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

Charleston Daily Mail
Legal Ad Department
1001 Virginia Street, East
Charleston, WV 25301

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,


Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Ms. Jeanne Chandler
Librarian
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

Dear Ms. Chandler:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Library of the Office of Air Quality located at the address below.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor
John M. Ranson
Cabinet Secretary

David C. Callaghan
Director
Ann A. Spaner
Deputy Director

June 22, 1994

Beckley Register/Herald
Legal Ad Department
P. O. Drawer P
Beckley, WV 25801

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,


Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Ms. Susan Vidovich
Librarian
Raleigh County Public Library
P. O. Box 1876
Beckley, West Virginia 25802

Dear Ms. Vidovich:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Raleigh County Public Library, P. O. Box 1876, Beckley, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

The Clarksburg Exponent
Legal Ad Department
P. O. Box 2000
Clarksburg, WV 26301

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,


Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Ms. Donna Riggs
Secretary
WV Office of Air Quality
North Central Regional Office
109 Adams Street, Room M-2
Fairmont, West Virginia 26554-2800

Dear Ms. Riggs:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, North Central Regional Office, 517 1/2 East Park Avenue, Fairmont, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

Mineral Daily News Tribune
Legal Ad Department
P. O. Box 879
Keyser, West Virginia 26726

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Ms. Karen Hiser
Librarian
Keyser-Mineral County Public Library
105 North Main Street
Keyser, West Virginia 26726

Dear Ms. Hiser:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

The Record Delta
Legal Ad Department
P. O. Box 550
Buckhannon, WV 26201

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,


Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Ms. Ruth B. Six
Librarian
Gassaway Public Library
100 Birch Street
Gassaway, West Virginia 26624

Dear Ms. Six:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

NOTICE OF PUBLIC HEARING

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- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Gassaway Public Library, 100 Birch Street, Gassaway, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

Elkins Inter-Mountain
Legal Ad Department
P. O. Box 1339
Elkins, WV 26241

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Elkins-Randolph County Public Library
c/o Librarian
416 Davis Avenue
Elkins, West Virginia 26241

Dear Librarian:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1538 Washington Street, East
Charleston, WV 25311-2599



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

1558 Washington Street, East
Charleston, WV 25311-2599

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 22, 1994

The Evening/Weekend Journal
Legal Ad Department
207 West King Street
Martinsburg, WV 25401

Dear Legal Ad Department:

Please publish the enclosed "Notice of Public Hearing" as soon as possible as a Class I legal advertisement. The publication must occur no later than Thursday June 29, 1994 excepting Sunday. If you have any questions regarding this matter, please contact Tammy Mowrer at 558-2275.

You may submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street, East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Ms. Peggy Y. Batten
Librarian
Martinsburg-Berkeley County Public Library
101 West King Street
Martinsburg, West Virginia 25401

Dear Ms. Batten:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 23, 1994

Mr. Richard Poling
Office of Air Quality
Eastern Panhandle Regional Office
P. O. Box 99
Burlington, West Virginia 26710

Dear Mr. Poling:

On Friday, July 29, 1994, the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on proposed rules. For your convenience enclosed is a copy of the "Notice of Public Hearing". The hearing will be held in the Office of Air Quality's conference room located at 1558 Washington Street, East, Charleston beginning at 9:00 a.m. The hearings will be on the following proposed rules: 45CSR14, 45CSR15, 45CSR16, 45CSR19, 45CSR33, 45CSR34 and 45CSR35.

If you have any questions or comments, please contact the undersigned.

Sincerely yours,

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
- 45CSR33 - Acid Rain Provisions and Permits (New Rule).
- 45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).
- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following locations: Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV and the Office of Air Quality's Burlington Office, P. O. Box 99, Burlington, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:
 45CSR14- Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the provision of Significant Deterioration (Amendment).
 45CSR15- Emission Standards for Hazardous Air Pollutants (Amendment).
 45CSR16- Standards of Performance for New Stationary Sources (Amendment).
 45CSR19- Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
 45CSR33- Acid Rain Provisions and Permits (New Rule).
 45CSR34- Emission Standards for Hazardous Air Pollutants (New Rule).
 45CSR35- Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, Northern Panhandle Regional Office, 1911 Warwood Avenue, Wheeling, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
 Office of Air Quality
 Division of Environmental Protection
 1558 Washington Street, East
 Charleston, WV 25311-2599

Intel, June 29
 N.R., June 29

STATE OF WEST VIRGINIA,
 COUNTY OF OHIO.

I, Bonnie Mattern for the publisher of the
~~WHEELING INTELLIGENCER~~
 WHEELING INTELLIGENCER newspapers published in the CITY OF
 WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication
 was inserted in said newspaper on the following dates:

June 29, 1994

commencing on the 29 day of June, 19 94

Given under my hand this 29 day of June, 19 94

Bonnie Mattern

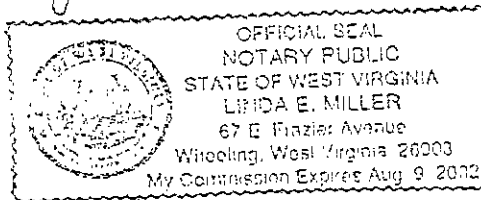
Sworn to and subscribed before me this 29th day of
June 19 94 at WHEELING, OHIO COUNTY, WEST
 VIRGINIA

Linda E. Miller

Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires August 9, 2002



NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16 - Standards of Performance for New Stationary Sources (Amendment).

45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrastate Pollutants (Amendment).

45CSR33 - Acid Rain Provisions and Permits (New Rule).

45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR80 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 24311-2599

Jun. 28 N

HEATHER BYERS
being first duly sworn, says that the

NOTICE OF PUBLIC HEARING

hereto attached was printed in the Parkersburg News
a DAILY newspaper published
in the City of Parkersburg, Wood County, West Virginia, and posted
at the front door of the Court House for ONE
successive weeks, the first publication and posting thereon being on
the 28th day of June, 1994, and subse-
quent publication on the day of , 19 ,
the day of , 19 , the day of
 , 19 , the day of ,
and the day of , 19 .

inter's Fee \$ 37.02
6/8 " x 103 = 592.25 words @ .0625

Subscribed and sworn to before me this 28th day of
June, 1994

Melanie Byers
Notary Public for Wood County, West Virginia

commission expires 3-23-04

NOTAR

1829-

MY

NOTICE
NOTICE OF
PUBLIC HEARING
On Friday, July 29,
1994, beginning at 9:00
a.m., the West Virginia
Division of Environmental
Protection, Office of
Air Quality, will hold a
public hearing on the
following proposed leg-
islative rules:

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF CABELL, TO-WIT:

45CSR14 - Permits for
Construction and
Major Modification of
Major Stationary
Sources of Air Pollu-
tion for the Preven-
tion of Significant
Deterioration
(Amendment).

45CSR15 - Emission
Standards for Haz-
ardous Air Pollutants
(Amendment).

45CSR16 - Standards
of Performance for
New Stationary
Sources (Amend-
ment).

45CSR19 - Require-
ments for Pre-
construction Review,
Determination of
Emission Offsets for
Proposed New or
Modified Stationary
Sources of Air Pollu-
tants and Emission
Trading for Intra-
source Pollutants
(Amendment).

45CSR33 - Acid Rain
Provisions and Per-
mits (New Rule).

45CSR34 - Emission
Standards for Haz-
ardous Air Pollutants
(New Rule).

45CSR35 - Require-
ments for Determin-
ing Conformity of
General Federal Ac-
tions to Applicable
Air Quality Imple-
mentation Plans (Gen-
eral Conformity)
(New Rule).

Upon authorization
and promulgation,
45CSR14, 45CSR19, and
45CSR35 will be submit-
ted to the U.S. Environ-
mental Protection Agen-
cy for incorporation into
the West Virginia Sta-
tion Implementation
Plan under the federal
Clean Air Act, as
amended. Upon authori-
zation and promulgation
of 45CSR15, 45CSR16,
45CSR34, the Direc-
tor of the Division of
Environmental Protec-
tion will request that
the EPA delegate to the
West Virginia DEP the
authority to enforce
the new Source Perform-
ance Standards promul-
gated by USEPA under
45CFR60 and National
Emission Standards for
Hazardous Air Pollu-
tants promulgated by
EPA under 40CFR61
and 40CFR63 as of June
1994. The DEP Direc-
tor will also request,
pursuant to legislative
approval and promulga-
tion, that USEPA ap-
prove 45CSR33 which
incorporates the State's
rating permit pro-
gram for facilities sub-
ject to the requirements
Title IV (Acid Rain
Program) of the Clean
Air Act.

I, Connie Rappold being first duly sworn, depose and say
that I am Legal Clerk for The Herald-Dispatch, a corporation, who publishes at Huntington,
Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspa-
per, in the morning seven days each week, Monday through Sunday including New Year's
Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have
been duly authorized by the Board of Directors of such corporation to execute this affidavit of
publication for an on behalf of such corporation and the newspaper mentioned herein; that the
legal advertisement attached in the left margin of this affidavit and made a part hereof and
bearing number LH-877 was duly published in

The Herald-Dispatch

1 time
~~one time, once a week for XXXXXX successive weeks~~, commencing with its issue of the
27th day of June, 19 94, and ending with the issue of the 27th day
of June, 19 94, and was posted at the East door
of the Cabell County Courthouse

on the 27th day of June, 19 94; that said legal advertisement was
published on the following dates: June 27, 1994

; that the cost of publishing said annexed advertisement as aforesaid was
\$76.96; that such newspaper in which such legal advertisement was published
has been and is now published regularly, at least as frequently as once a week for at
least fifty weeks during the calendar year as prescribed by its mailing permit, and has
been so published in the municipality of Huntington, Cabell County, West Virginia, for
at least one year immediately preceding the date on which the legal advertisement
set forth herein was delivered to such newspaper for publication; that such newspa-
per is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the
West Virginia Code, within the publication area or areas of the municipality of Hunt-
ington, Cabell and Wayne Counties, West Virginia, and

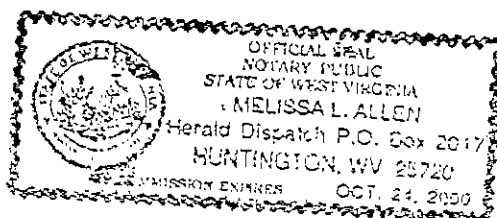
that such newspaper is circulated to the general public at a definite price or consid-
eration; that such newspaper on each date published consists of not less than four
pages without a cover; and that it is a newspaper to which the general public resorts
for passing events of a political, religious, commercial and social nature, and for cur-
rent happenings, announcements, miscellaneous reading matters, advertisements
and other notices.

Connie Rappold

Taken, subscribed and sworn to before me in my said county this 27th day of
June, 19 94

My commission expires October 24, 2000

Melissa L. Allen



Notary Public
Cabell County,
West Virginia

10M Form A-135 (867H)

ence Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Cabell County Public Library, 455 9th Street Plaza, Huntington, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of
Environmental
Protection
1558 Washington St. E.
Charleston, WV
25311-2599
LH-877 6-27-94



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

ACCOUNT NBR	037143002
SALES REP ID	0016
INVOICE NBR	371430020629005

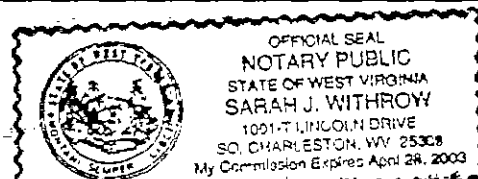
Legal pricing is based upon 67 words per column inch at a rate of \$.0725 per word.
Each successive insertion is discounted by 25% of the first insertion rate (\$.054375 per word).

ISSUE DATE	AD TYPE	PUB	DESCRIPTION REFERENCE NBR PURCHASE ORDER #	AD NUMBER	AD SIZE TOTAL RUN	RATE	GROSS AMOUNT	NET AMOUNT
06/28	LEGE	DM	PUBLIC HEARING 121258001	L213020	3X0400 12.00	4.85	58.20	58.20
TOTAL INVOICE AMOUNT								58.20

State of West Virginia,

AFFIDAVIT OF PUBLICATION

I, Sarah J. Withrow of



THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,
published in the city of Charleston, Kanawha County, West Virginia, do solemnly swear that the indexed 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 29TH day of JUNE 1994. Published during the following dates: 06/28/94-06/28/94

Subscribed and sworn to before me this 30 day of June

Printers fee \$ 58.20

Sarah J. Withrow
Notary Public of Kanawha County, West Virginia

LEGAL ADVERTISEMENT

LEGAL ADVERTISEMENT

LEGAL ADVERTISEMENT

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

- 45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
- 45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).
- 45CSR16 - Standards of Performance for New Stationary Sources (Amendment).
- 45CSR19 - Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).
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- 45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following: Library of the Office of Air Quality located at the address below.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599

(213020)

The items listed hereon conform to specification, were received and are approved for payment.						
Date: 07-21-94		Signed: <u>[Signature]</u>				
Appn. Yr.	Act #	Line Item				
95	7897-17	035				
Off. Code	Fed. Code	P.C.				
5	504	509				
Purchase Auth.	Vendor			Off App/ Date		
SA	FEIN # 550-676-079					
No.	SS #					
FIMS FUND	FIMS FY	FIMS ORG	FIMS ACT	FIMS OBJ CODE	DOC #	
8708	1995	0313	096			

AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS INC.
BECKLEY, WEST VIRGINIA 25801

June 28, 1994

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Robert E. Zutaut being first duly sworn upon my oath, do depose and say that I am Advertising Manager of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for one
successive week (Class I), commencing with the issue of the
28th day of June, 1994 and ending with the issue
of the 28th day of June, 1994, (and was posted at the

on the _____ day of _____); that said annexed
notice was published on the following dates: _____

June 28, 1994 and that the
cost of publishing said annexed notice as aforesaid was \$ 37.40

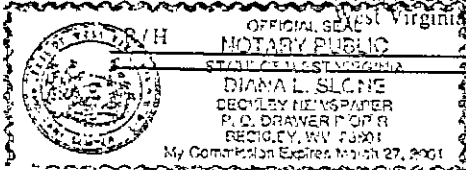
Signed Robert E. Zutaut
Robert E. Zutaut, Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this

28th day of June, 1994

My commission expires March 27, 2001

Diana L. Slone
Notary Public of Raleigh County,



COPY OF PUBLICATION

7-12-Tue-4-RH

NOTICE OF PUBLIC HEARING
On Friday, July 29, 1994,
beginning at 9:00 a.m., the West
Virginia Division of
Environmental Protection, Office
of Air Quality, will hold a public
hearing on the following
proposed legislative rules:

45CSR14 - Permits for
Construction and Major
Modification of Major Stationary
Sources of Air Pollution for the
Prevention of Significant
Deterioration (Amendment).

45CSR15 - Emission Standards
for Hazardous Air Pollutants
(Amendment).

45CSR16 - Standards of
Performance for New Stationary
Sources (Amendment).

45CSR19 - Requirements for
Pre-construction Review,
Determination of Emission
Offsets for Proposed New or
Modified Stationary Sources of
Air Pollutants and Emission
Trading for Intrastate
Pollutants (Amendment).

45CSR33 - Acid Rain Provisions
and Permits (New Rule).

45CSR34 - Emission Standards
for Hazardous Air Pollutants
(New Rule).

Upon authorization and
promulgation, 45CSR14,
45CSR19, and 45CSR35 will be
submitted to the U.S.
Environmental Protection
Agency for incorporation into the
West Virginia State
Implementation Plan under the
federal Clean Air Act, as
amended. Upon authorization
and promulgation of 45CSR15,
45CSR16 and 45CSR34, the
Director of the Division of
Environmental Protection will
request that USEPA delegate to
the West Virginia DEP the
authority to enforce New Source
Performance Standards
promulgated by USEPA under
40CFR60 and National Emission
Standards for Hazardous Air
Pollutants promulgated by USEPA
under 40CFR61 and 40CFR63 as
of June 1, 1994. The DEP Director
will also request, pursuant to
legislative approval and
promulgation, that USEPA
approve 45CSR33 which
incorporates the State's
operating permit program for
facilities subject to the
requirement of Title VI (Acid Rain
Program) of the Clean Air Act.

The public hearing will be held
in the Office of Air Quality's
Conference Room at 1558
Washington Street East,
Charleston, West Virginia. The
hearing is open to the public.
Written comments by all
interested parties will be
accepted from the date of this
notice until the close of the
hearing and made part of the rec-
ord. Oral comments will be
accepted at the public hearing
and will be limited to five mi-
nutes per person per rule. The
period for public comment will
end at the close of the hearing.

Copies of the proposed
legislative rules may be obtained
from the Office of Secretary of
State or may be reviewed during
normal business hours at the

following location: Retain
County Public Library, P.O. Box
1876, Beckley, WV.

Please provide any written
comments or questions to the
following contact and office:
Dale Farley, Office of Air Quality
Division of Environmental
Protection, 1558 Washington
Street, East, Charleston, WV
25311-2599.

8-28-Tue-1-RH

NOTICE OF PUBLIC HEARING
On Friday, July 29, 1994, beginning at 9:00 a. m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14. Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).
45CSR15. Emission Standards for Hazardous Air Pollutants (Amendment).
45CSR16. Standards of Performance for New Stationary Sources (Amendment).
45CSR19. Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrastate Pollutants (Amendment).
45CSR33. Acid Rain Provisions and Permits (New Rule).
45CSR34. Emission Standards for Hazardous Air Pollutants (New Rule).
45CSR35. Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Office of Air Quality, North Central Regional Office, 517 1/2 East Park Avenue, Fairmont, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2559

PUBLISHER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF HARRISON

Deborah S. Veltri

Classified Office Manager of THE CLARKSBURG EXPONENT, a newspaper of general circulation published in the City of Clarksburg, County and State aforesaid, do hereby certify that the annexed

Notice of Public Hearing

was published in said THE CLARKSBURG EXPONENT one time, on the

25 day of June 1994

The publisher's fee for said publication is \$ 20.70

Classified Office Mgr. of The Clarksburg Exponent

SEAL

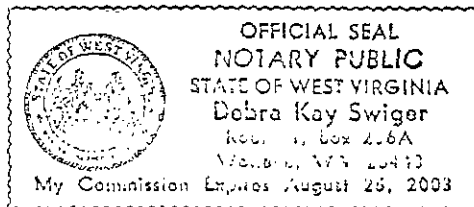
Subscribed and sworn to before me this 25 day
June 94

of 19

Debra Kay Swiger
Notary Public in and for Harrison County, WV

My commission expires on the 25th day of August, 2003

Form CA-14 E



I, as an officer of the News-Tribune, a daily newspaper published at Keyser, Mineral County, West Virginia, hereby certify that the Division

of Environmental Protection
in the case of Notice of

Public Hearing: Proposed

Legislative Rules

vs. _____

a copy whereof is hereto annexed has been published for

1 consecutive day

in said NEWS-TRIBUNE, the first publication being on the 28th day of,

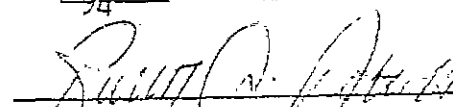
June

19 94.

Given under my hand at Keyser this 28th

day of June,

19 94.


Publisher

Publisher's Fee

\$ 31.50

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16 - Standards of Performance for New Stationary Sources (Amendment).

45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrastate Pollutants (Amendment).

45CSR33 - Acid Rain Provisions and Permits (New Rule).

45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16, and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR 61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599

6:28

State of West Virginia, County of Upshur, ss:

.....Mark Davis.....Advertising Manager
Record Delta, a newspaper published at Buckhannon in the said county, do hereby
certify that the annexed.....NOTICE OF PUBLIC HEARING.....

.....
was published once a week for...ONE (1).....successive weeks in
said Record Delta newspaper published as aforesaid, commencing on the 27th day...

.....of June.....days of 19..94.....

Given under my hand this 29th day of June...day of 19..94.....

.....Advertising Manager

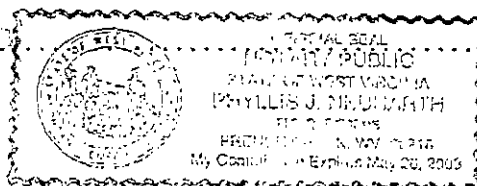
Printers fee \$. 27.60.....

WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 29th day of June day of 19..94.....

.....Phyllis J. Neumann.....Notary Public.

My Commission expires May 26, 2005



NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15 - Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16 - Standards of Performance for New Stationary Sources (Amendment).

45CSR19 - Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants (Amendment).

45CSR33 - Add Rain Provisions and Permits (New Rule).

45CSR34 - Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35 - Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR80 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR81 and 40CFR83 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of the Secretary of State or may be reviewed during normal business hours at the following location: Gassaway Public Library, 100 Birch Street, Gassaway, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2599

6-27

State of West Virginia, County of Randolph, ss.

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14 — Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15 — Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16 — Standards of Performance for New Stationary Sources (Amendment).

45CSR19 — Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrastate Pollutants (Amendment).

45CSR33 — Acid Rain Provisions and Permits (New Rule).

45CSR34 — Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35 — Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity) (New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR35 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comments will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following location: Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street, East
Charleston, WV 25311-2500

I, James Hoffman, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

June 25

19 94 as required by law.

Given under my hand this 25 day of June, 19 94

James Hoffman
4169
Publisher

Printer's Fee: \$

ore me this 25 day of June, 19 94

Shirley A. Mearns
Notary Public

15 day of April 19 2002

NOTICE OF PUBLIC HEARING

On Friday, July 29, 1994, beginning at 9:00 a.m., the West Virginia Division of Environmental Protection, Office of Air Quality, will hold a public hearing on the following proposed legislative rules:

45CSR14- Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration (Amendment).

45CSR15- Emission Standards for Hazardous Air Pollutants (Amendment).

45CSR16- Standards of Performance for New Stationary Sources (Amendment).

45CSR19- Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants (Amendment).

45CSR33- Acid Rain Provisions and Permits (New Rule).

45CSR34- Emission Standards for Hazardous Air Pollutants (New Rule).

45CSR35- Requirements for Determining Conformity of General Federal Actions to Applicable Air Quality Implementation Plans (General Conformity)(New Rule).

Upon authorization and promulgation, 45CSR14, 45CSR19, and 45CSR25 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the federal Clean Air Act, as amended. Upon authorization and promulgation of 45CSR15, 45CSR16 and 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994. The DEP Director will also request, pursuant to legislative approval and promulgation, that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The public hearing will be held in the Office of Air Quality's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written comments by all interested parties will be accepted from the date of this notice until the close of the hearing and made part of the record. Oral comments will be accepted at the public hearing and will be limited to five minutes per person per rule. The period for public comment will end at the close of the hearing.

Copies of the proposed legislative rules may be obtained from the Office of Secretary of State or may be reviewed during normal business hours at the following locations: Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV and the Office of Air Quality's Burlington Office, P.O. Box 99, Burlington, WV.

Please provide any written comments or questions to the following contact and office:

G. Dale Fraley
Office of Air Quality
Division of
Environmental Protection
1558 Washington Street, East
Charleston, West Virginia 25301

Certificate of Publication

This is to certify the annexed advertisement

WV DEPT.COMM., LABOR, ENV. RES.
DIV. ENV. PROTECTION, MS. SITTON

NOTICE OF PUBLIC HEARING

appeared for 1 consecutive ^{days} weeks
in The Journal Publishing Company a
newspaper published in the City of
Martinsburg, W. Va., in its issue
beginning

6/29

and ending

The Journal

Fee \$ 39.16

OAQ MAILING LIST FOR PUBLIC HEARINGS/MEETINGS

Mr. Larry Myers
Allegheny Power Service Corp.
800 Cabin Hill Drive
Greensburg, Pennsylvania 15601

Mr. Brian Broderick
BNA PLUS
Bureau of National Affairs
1231 25th Street, N.W.
Washington, D.C. 20037

Mr. Greg Scandrett
ERM Midwest
5088 West Washington Street
Charleston, WV 25313

Ms. Becky Fleming
Charleston Daily Mail
1001 Virginia Street, East
Charleston, WV 25301

Mr. Norm Steenstra
Environmental Coordinator
West Virginia Citizen Action Group
1324 Virginia Street, East
Charleston, West Virginia 25301

Mr. Eric Niller
Charleston Gazette
1002 Virginia Street, East
Charleston, WV 25301

Ms. Joline Brady
103 Timberlake Circle
Scott Depot, WV 25560

Ms. Mildred Holt
P. O. Box 367
Institute, WV 25112

Ms. Lillian Erskin
52 Bailes Drive
Nitro, WV 25143

Ms. Suzanne Tenkhoff
National Institute for Chemical Studies
Nitro/St. Albans Committee
31 Bailes Drive
Nitro, West Virginia 25143

Mr. Ray de Bolt
Fire Chief
Charleston Fire Department
808 Virginia Street, West
Charleston, WV 25302

The Honorable William Croye
Mayor, City of Belle
National Institute for Chemical Studies
Upper Kanawha Valley Committee
110 East DuPont Avenue
Belle, West Virginia 25015

Dr. Paul Hill, President
National Institute for Chemical Studies
University of Charleston
2300 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304

Mr. Tim Carroll
Regional Office Supervisor
Northern Panhandle Regional Office
WV Office of Air Quality
1911 Warwood Avenue
Wheeling, West Virginia 26003

Mr. William Taylor
Regional Engineer
North Central Regional Office
WV Office of Air Quality
109 Adams Street, Room M-2
Fairmont, WV 26554-2800

Mr. Robert Parsons
Jackson & Kelly
1600 Laidley Tower
Charleston, WV 25301

Mr. Ira H. Dorfman
Vice-President, Energy & Environment
Ryan-McGinn
2300 Clarendon Blvd., Suite 610
Arlington, VA 22201

Larry G. Kopelman
Special Assistant Attorney General
WV Air Pollution Control Commission
No. 9 Pennsylvania Avenue
Charleston, WV 25302

Ms. Kim Baker
Ohio Valley Environmental Coalition
P. O. Box 970
Proctorville, OH 45669

Ms. Helen Gibbins
6128 Gideon Road
Huntington, WV 25705

Ms. Missy Woolverton
WV Citizen Action Group
1324 Virginia Street, East
Charleston, WV 25301

Ms. Rhonda Hooper
Monsanto
1 Monsanto Road
Nitro, WV 25143

Mr. Richard Poling
Engineer II
c/o WV Division of Highways
P. O. Box 88
Burlington, WV 26710

Ms. Claudia Banner
Appalachian Power Company
P. O. Box 2021
Roanoke, Virginia 24022-2121

Mr. David C. Callaghan
Director, Division of Environmental
Protection
10 McJunkin Road
Nitro, WV 25143-2506

Act Foundation
523 Central Avenue
Charleston, WV 25302

Ms. Pamela Nixon
406 Grandview Point
Dunbar, WV 25064

Mr. Oliver A. Fick
Air Program Manager
Engineering-Science, Inc.
57 Executive Park South, N.E.
Suite 590
Atlanta, Georgia 30329-2265

Mr. Brian Farkas
Public Information Officer
WV Division of Environmental
Protection
10 McJunkin Road
Nitro, WV 25143-2506

Ms. Liz McMeekin
Aristech Chemical Company
600 Grant Street
Pittsburgh, PA 15219

Ms. Liz Schiffer
128 Woodbridge Drive
Charleston, WV 25311

Ms. Britt Bernheim
Office of Air Quality
1615 Washington Street, East
Charleston, WV 25311

PUBLIC HEARING

JULY 29, 1994

NAME	COMPANY AFFILIATION	ADDRESS
Dale Farley	Office of Air Quality	1558 Washington St.
John Johnston	" "	" "
Jeff Hedgecock	" "	" "
Jeanne Chandler	" "	" "
Mansour Alaeiddini	" "	" "
Dave White	" "	" "
Kim Carter	" "	" "
John Benedict	" "	1615 Washington St.
Rupe Burford	" "	" "
Fred Durham	" "	" "
Karen Price	WV Manufacturers Assoc.	2001 Quaverer St.
Christy Morris	Superior Court Reporting	3719 Virginia Ave. S.E.

PUBLIC HEARING

JULY 29, 1994

NAME	COMPANY AFFILIATION	ADDRESS
Kim Brown Poland	Robinson & McElwee	P.O. Box 1791 - Chad.
Yvonne Clarkson	Allegheny Power	800 Cabin Hill Drive
C. J. Banner	Appalachian Power	P.O. Box 2021 Roanoke, Va.
Bob Foster	Charles Ryan Association	Chad.
David Yaworsky	Robinson & McElwee	P.O. Box 1791 - Chad.
Rozem Watson	Office of Air Quality	1615 Washington St.

PUBLIC HEARING
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY

* * * * *

The following is a transcript of a public hearing held at the West Virginia Division of Environmental Protection, Office of Air Quality, 1558 Washington Street, Charleston, Kanawha County, West Virginia, on July 29, 1994, at 9:00 a.m., and taken by Christy L. Morris, Certified Court Reporter and Notary Public, pursuant to notice.

* * * * *

S U P E R I O R C O U R T R E P O R T I N G
Christy L. Morris, CCR
3719 Virginia Avenue, S.E.
Charleston, West Virginia 25304
(304) 925-2244 Mobile 542-4606

ORIGINAL

PROCEEDINGS

MS. CHANDLER: Good morning. The public hearing will now come to order this 29th day of July, 1994 in the conference room of the West Virginia Division of Environmental Protection Office of Air Quality located at 1558 Washington Street, East, Charleston, West Virginia.

The purpose of the public hearing is to hear discussions on the seven rules filed in the Secretary of State's office on April 27, 1994, and noticed in the State register on April 29, 1994. In addition, the rules were noticed in Class 1 legal newspaper announcements throughout the State and to various individuals and organizations.

This public hearing is being held pursuant to the provisions of 29A of the West Virginia Code and Section 110 of the Clean Air Act.

By the way of introduction, my name is Jeanne Chandler of the Public Information Office of the West Virginia Division of Environmental Protection. I will be the moderator for these proceedings today.

The format of today's hearing may appear different than in the past for those of you

familiar with the prior APCC rulemaking hearings. The 1994 legislature enacted legislation which became effective on June 10, 1994, which reorganized the Division of Environmental Protection.

One of the effects of the legislation was to make the Air Program one of the offices of DEP, and as a result, the Air Pollution Control Commission no longer conducts rulemaking.

Because of time restraints this year, the Office of Air Quality decided to make the close of the comment period coincide with the close of today's hearing and noticed that fact in the public announcement.

One change in the Administrative Procedures Act which became effective in 1994 was the prohibition of ex parte communication with the rulemaking agency once the comment period closed.

Therefore, written comments will be accepted at the close of today's hearing but no later. The next opportunity to enter comments will be when the legislative rule-making committee begins its hearings on the proposed rules.

The hearing procedure today will be to introduce each rule individually, allow time for oral

comments, and close the hearing for that particular rule. Written comments for any rule may be submitted at the end of this public hearing.

Oral comments will be limited to five minutes per person, and for those of you wishing to make formal comments, a sign-up sheet was available, so if you haven't already signed up, please do so, now.

Also, if you're just a participant here today, we'd also like you to fill out the top page just for our record. I remind you that the comment period will close at the end of the public hearing today.

The court reporter is Ms. Christy Morris of Superior Court Reporting. If anyone desires a transcript of this proceeding, then please contact Ms. Morris at 925-2244, and her address is 3719 Virginia Avenue, S.E., Charleston, 25304.

45CSR14

The purpose of the public hearing is to hear discussions on proposed Rule 45CSR14.

Permits For Construction And
Modification Of Major Stationary Sources Of Air
Pollution For The Prevention Of Significant

Deterioration. That's an amendment.

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 1 of the 1990 Clean Air Act Amendments to air pollution abatement projects undertaken at electric utility steam generating units; and changes to response to a petition by the West Virginia Manufacturer's Association to remove the hazardous air pollutants from PSD-review in accordance with section 112(b) (6) of the 1990 Clean Air Act Amendment. Definitions in Section 2 have been alphabetized.

Changes also reflect enactment of DEP Code. Changes are indicated by underline and strikeout.

Upon authorization and promulgation, 45CSR14 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia State Implementation Plan under the Federal Clean Air Act, as amended.

The floor is now open for any public comment. Oral comments, I will remind you, will be

limited to five minutes, and if you are called upon for comments, please go to the podium, identify yourself and affiliation, if any, prior to making any of your comments.

Yvonne Clarkson, would you like to make a comment?

MS. CLARKSON: I will be submitting written comments.

MS. CHANDLER: Kim Brown Poland.

MS. POLAND: I'll be submitting written comments on behalf of the Manufacturer's Association.

MS. CHANDLER: Well, for time's sake, does anyone want to make any oral comments regarding 45CSR14?

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR14 is now concluded.

45CSR15

MS. CHANDLER: The purpose of the public hearing is to hear discussions on proposed rule 45CSR15.

Emission Standards For Hazardous Air Pollutants Pursuant To 40 CFR Part 61. This is an amendment.

This rule adopts emission standards for hazardous air pollutants promulgated by the United States Environmental Protection Agency under the federal Clean Air Act, as amended, and 40 CFR Part 61.

It is the intent of the Director to adopt these standards by reference. It is also the intent of the Director to adopt associated reference methods, performance specifications and other test methods which are appended to such standards.

Upon authorization and promulgation of 45CSR15, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 4-CFR63 as of June 1, 1994.

The floor is now open for public comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR15 is concluded.

45CSR16

MS. CHANDLER: The purpose of the public hearing is to hear discussions on proposed rule 45CSR16.

Standards Of Performance For New Stationary Sources. This is an amendment.

45CSR16, "Standards of Performance for New Stationary Sources", adopted by reference New Source Performance Standards (NSPS) promulgated by USEPA through May 1, 1993. This revision to the rule updates NSPS requirements through June 1, 1994.

Upon authorization and promulgation of 45CSR16, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards For Hazardous Air Pollutants promulgated by USEPA under 40CFR61 and 40CFR63 as of June 1, 1994.

The floor is now open for public comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45 CSR16 is concluded.

45CSR19

MS. CHANDLER: The purpose of the public

hearing is to hear discussions on proposed rule 45CSR19.

Requirements For Pre-construction Review, Determination Of Emission Offsets For Proposed New Or Modified Stationary Sources Of Air Pollutants And Emission Trading For Intrastate Pollutant. This is an amendment, also.

45CSR19 is currently being revised to reflect USEPA's changes to 40CFR Section 51.165. Changes include clarifying nonattainment area preconstruction review requirements of Title 1 of the 1990 Clean Air Act Amendments to projects undertaken at electric utility steam generating units in areas not attaining an ambient air quality standard; changes resulting from changes to the authorizing statute; and changes in Clean Air Act provisions.

Definitions in Section 2 have been alphabetized. Changes are indicated by underline and strikeout.

Upon authorization and promulgation, 45CSR19 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia state implementation plan under the federal Clean Air Act, as amended.

The floor is now open for any public

comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further,
the public hearing for 45CSR19 is concluded.

45CSR33

MS. CHANDLER: The purpose of this hearing is
to hear discussions on proposed rule 45CSR33.

Acid Rain Provisions And Permits.
This is a new rule. This rule adopts by reference the
Title IV requirement of the Clean Air Act.

The Title IV requirements must be
implemented by the State through adoption of the
National Operating Permit System conforming to Title IV
and V of the Clean Air Act.

Phase I permit applications were
submitted to USEPA by February 15, 1993, and processed
by EPA.

Phase II permit applications must be
submitted by January 1, 1996, and will be processed by
the State assuming the State has an approved Title V
Operating Permit Program (via 45CSR30) and this
approved Title IV rule.

Pursuant to legislative approval and

promulgation, the DEP Director will request that USEPA approve 45CSR33 which incorporates the State's operating permit program for facilities subject to the requirements of Title IV (Acid Rain Program) of the Clean Air Act.

The floor is now open for public comment.

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR33 is concluded. --

45CSR34

MS. CHANDLER: The purpose of this public hearing is to hear discussions on proposed rule 45CSR34.

Emission Standards For Hazardous Air Pollutants Pursuant To 40CFR Part 63. This is a new rule.

Title 45, Series 34 provides authority for the Director to determine and enforce case-by-case MACT standards for major hazardous air pollutant sources in the absence of a federal standard under certain circumstances as required for permit program approval under Title V of the Clean Air Act.

The proposed rule also establishes general provisions for emission standards for hazardous

pollutants (NESHAPS) and other regulatory requirements pursuant to section 112 of the federal Clean Air Act.

The rule codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the hazardous air pollutants in or pursuant to section 112 (b) of the Clean Air Act.

This rule incorporates by reference provisions relating to perchloroethylene dry cleaners, coke ovens, and synthetic organic chemical manufacturing (HON).

Upon authorization and promulgation of 45CSR34, the Director of the Division of Environmental Protection will request that USEPA delegate to the West Virginia DEP the authority to enforce New Source Performance Standards promulgated by USEPA under 40CFR60 and National Emission Standards for Hazardous Air Pollutants promulgated by the EPA under 40CFR61 and 40CFR63 as of June 1, 1994.

This floor is now open for public comment.

MS. CRITES: Good morning. My name is Karen Crites. I'm president of the West Virginia Manufacturer's Association.

The WVMA recognizes that EPA has put the office of Air Quality in a difficult position by its failure to develop timely our rule implementing Section 112 (g) of the Clean Air Act.

The State cannot adopt a complete a rule establishing its own method of implementing Section 112 (g) because, eventually, the State rule will have to be changed to reflect a federal rule when EPA completes it.

On the other hand, the Clean Air Act requires the State to make case-by-case MACT determination as soon as the State permit program is approved.

In light of the OAQ's inability, through no fault of its own, to promulgate a complete rule addressing section 112 (g), the WVMA suggests this rule be withdrawn and that the OAQ asks EPA, Region 3, to delay approval of the State's permit program until the federal 112 (g) is finalized.

Without an approved permit program, there is no requirement for the State to act under section 112 (g). If that is not acceptable, the WVMA suggests that the rule be withdrawn because there is already authority in existing rules: notably thirteen

and series 30 that would allow the OAQ to MACT determination on a temporary basis until a complete Rule 34 could be finalized.

Delaying Rule 34 until a federal rule is ready would efficiently conserve the Office of Air Quality's resources while still allowing the chief to comply with the requirements of the Clean Air Act through use of currently effective State rules.

Thank you for this opportunity to comment.

MS. CHANDLER: Is there any oral comments on 45CSR34?

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, the public hearing for 45CSR34 is concluded.

45CSR35

MS. CHANDLER: The purpose of the public hearing is to hear discussions on proposed rule 45CSR35.

Requirements For Determining Conformity Of General Federal Actions To Applicable Air Quality Implementation Plans. (General Conformity) This is a new rule.

The purpose of this rule is to adopt

the requirements of 40CFR Part 93, Subpart B, "Determining Conformity of General Federal Actions to State or Federal Implementation Plans".

The federal rule was promulgated by the U. S. Environmental Protection Agency to implement Section 176 (c) of the Clean Air Act, as amended, which requires that all federal actions conform to applicable air quality implementation plans.

This rule sets forth policy, criteria and procedures for demonstrating and assuring conformity of such activities to all applicable implementation plans developed pursuant to Section 110 and Part D of the Clean Air Act.

The rule generally applies to federal actions except: (1) Those required under the transportation of conformity rule (40CFR Part 93, Subpart A); (2) Actions with associated emissions below specified de minimis levels; and (3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

Upon authorization and promulgation, 45CSR35 will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia state implementation plan under the federal

Clean Air Act, as amended.

The floor is now open for public comment.

MR. DURHAM: Good morning, my name is Fred Durham. I work for the West Virginia Division of Environmental Protection Office of Air Quality as a air pollution specialist.

Our office submitted this general proposed conformity rule to the United States Environmental Agency, Region 3, for review and comments.

Yesterday, I spoke with a representative from USEPA, Region 3, who informed me that no formal comments would be complete by today's hearing.

However, the representative did conduct a preliminary evaluation of this proposed rule, and in her opinion no major flaws were evident. Thank you.

MS. CHANDLER: Are there any more public comments on 45CSR?

(NO COMMENTS.)

MS. CHANDLER: There being nothing further, this public hearing for 45CSR35 is concluded.

Would anyone else like to make any

comments concerning any of the rules?

(NO COMMENTS.)

MS. CHANDLER: If not, this hearing is
concluded.)

(WHEREUPON, said hearing was
concluded at 9:25 a.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to wit:

I, Christy L. Morris, Certified
Court Reporter and Notary Public duly certified and
commissioned, do hereby certify that the foregoing is a
true and accurate transcript of the proceedings had in
the public hearing on the 29th day of July, 1994.

Given under my hand and notarial
seal this 29th day of JULY, 1994.

C L Morris CCR
Certified Court Reporter
Notary Public

MY COMMISSION EXPIRES: 12/11/95



VIRGINIA POWER

July 25, 1994

Mr. G. Dale Farley
Office of Air Quality
1558 Washington Street E
Charleston, WV 25311

Dear Mr. Farley:

Enclosed for your consideration are Virginia Power's comments on proposed revisions to 45 CSR Series 14. We appreciate this opportunity to participate in the rulemaking process.

Very truly yours,

A. W. Hadder
Manager Air Quality

COMMENTS OF
VIRGINIA POWER
ON PROPOSED REVISIONS TO
45CSR14

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

1. The proposed new Section 2.1d is identical to the corresponding federal regulations (40 CFR 51.166(b)(21)(v)) except for a few words in the last two lines. Since the proposed wording does not seem to make sense, and because the corresponding section of the proposed Regulation 19 agrees with the federal wording, we suspect the deviation from the Federal wording may be the result of a word processing error. The section could be returned to the Federal version by making the following revisions:

... if the Director determines ~~the physical or operational change following~~ such a period to be more representative of normal source post-change operations.

However, if the rewording of the section was an attempt to improve it by eliminating the awkward phrase "post-change", that objective could be accomplished as follows:

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

2. The proposed Section 2.44a has been adapted from the Federal version (40 CFR 51.166(b)(32)(i)) in an attempt to make it applicable to a state regulation by replacing the words

... filings with the State or Federal regulatory authorities...

with the words ...

... filings with the Director or USEPA....

We believe, however, that the Federal regulation was not intended to limit the applicability of this provision to filings with the State or Federal *air pollution control* authorities. This phrase is used in the context of specifying that the reviewing authority (i.e., the Director) "shall consider all relevant information" in projecting future emissions from a source. Projections of future emissions are dependent upon projections of future source operation, which, for utility facilities, may be represented in filings with the Federal Energy Regulatory Commission, the Public Service Commission of West Virginia, and other state utility commissions for the states in which interstate utilities operate. To the extent that they may include projections of future operations, such filings with the utility regulatory authorities are likely to be of greater value in making emission projections for utility sources than are any filings with the Director or

USEPA, and should not be excluded. Excluding such information from consideration would make the proposed section of Regulation 14 more stringent than the corresponding Federal regulation. We recommend that the exact wording of the Federal regulation be used.

3. Although the West Virginia Code requires, in certain cases, that the Director make statements about the stringency of state regulations relative to corresponding federal regulations, and about constitutional takings, we question whether it is appropriate to include such statements in the regulation and whether the proposed statements are adequate to meet the Director's obligations. Inclusion of these statements in the regulation could have unintended effects. For example, if a statement within the regulation says that the regulation is not more stringent than the federal equivalent, but some part of the regulation is later interpreted to be more stringent in a particular circumstance, the resulting internal inconsistency within the regulation may be cause for questioning its true meaning and enforceability. We suggest that these statements be separated from the regulation.

4. Paragraph 4A of the Fiscal Note accompanying the proposed regulation states that "funding for this program will come from fees collected pursuant to 45CSR30 ...". We respectfully submit that this is not possible. Regulation 45CSR30 deals solely with Title V operating permits and the fees for the Title V program, and use of Title V fees for other purposes is prohibited by both

Federal and state law. Series 19 deals with pre-construction review of new or modified sources, and is not related to Title V. Therefore, its funding must come from other sources.

5. Many of the provisions of the proposed Regulation 14 are inconsistent with the corresponding provisions of Federal regulations, and should be revised to ensure that the state regulations are not more stringent than the Federal ones. It is our understanding that the comments of the West Virginia Manufacturers Association (WVMA) will address these issues in some detail. We urge the Office of Air Quality to give serious consideration to the comments of the WVMA with respect to the following sections of the proposed regulation:

- 45 CSR 14-2.27 Definition of "Major Modification"
- 45 CSR 14-2.29 Definition of "Major Source Baseline Date"
- 45 CSR 14-2.30 Definition of "Major Stationary Source"
- 45 CSR 14-2.32 Definition of "Minor Source Baseline Date"
- 45 CSR 14-2.35 Definition of "PM10"
- 45 CSR 14-2.36 Definition of "Particulate Matter"
- 45 CSR 14-2.46 Definition of "Significant"
- 45 CSR 14-7 Requirements Relating to Control Technology
- 45 CSR 14-12 Additional Requirements and Variances for Sources Impacting Federal Class I Areas
- 45 CSR 14-15 Procedures for Exemptions from Specific Sections of this Rule
- 45 CSR 14-16 Public Review Procedures

Appalachian Power Company

PO Box 2021
Roanoke, VA 24022-2121
703 985 2300



**APPALACHIAN
POWER**

Mr. G. Dale Farley, Chief
West Virginia Office of Air Quality
1558 Washington Street, East
Charleston, West Virginia 25311

July 27, 1994

Dear Mr. Farley:

Appalachian Power Company appreciates the opportunity to comment on the proposed Air Regulation, 45 CSR 14, "Permits for . . . the Prevention of Significant Deterioration."

Appalachian Power owns and operates four fossil-fired steam plants in West Virginia. We are greatly impacted by the proposed rule and offer the following comments in addition to those submitted by the WV Manufacturers Association:

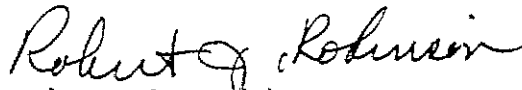
1. The funding for the Regulation 14 program cannot come from the Regulation 30 (Title V) fees as indicated on page 2 of Appendix B - Fiscal Note for Proposed Rules. Title V fees are for the specific funding of Title V program activities. Additionally, the construction permits have a fee structure of their own and should not require any additional funding.
2. The definition of "actual emissions" in Section 2.1.d. should be revised. The last sentence in the paragraph should read, "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 post change operations." This clarifies the definition and aligns it with "actual emissions" definitions found in other regulations.
3. The definition of "air pollution" in Section 2.4 should include a reference to "the act of a person, . . ." as "person" is defined in several other air regulations. This change should be made so as to make this definition consistent with other definitions in other regulations.
4. The six-month time frame for issuing permits is much too long. To remain competitive with industry in surrounding states, we must be able to react to

Mr. G. Dale Farley
July 27, 1994
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market conditions in an expeditious manner. Doing anything else means that jobs and revenue leave West Virginia for states that can service the industry in an efficient manner. A time period of having the permit issued within a 90 day time frame would be much more beneficial to the OAQ and to industry. At the time of permit application, the modeling, groundwork for BACT, and any other requirements necessary for application should be accomplished. Approving or disapproving the permit should not require 180 days.

We look forward to working with the OAQ to create a regulation that will protect the air standards in West Virginia, but at the same time, will allow industry to locate and work.

Sincerely,

A handwritten signature in cursive script, reading "Robert J. Robinson".

Robert J. Robinson
Environmental Affairs Director

RJR:CJB:d



Allegheny Power System

LARRY D. MYERS
Director, Environmental Services

Bulk Power Supply
800 Cabin Hill Drive
Greensburg, PA 15601-1689
(412) 638-6806 FAX (412) 638-6888

July 28, 1994

Mr. G. Dale Farley
Chief, WV Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

Dear Mr. Farley:

Allegheny Power Service Corporation (APSC), on behalf of Monongahela Power Company (Mon Power) and The Potomac Edison Company (Potomac Edison), offers the following comments on proposed legislative rules 45CSR14 and 45CSR19.

45CSR14 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.

1. The funding required for the Regulation 14 program cannot be obtained by utilizing Title V, Regulation 30 fees as stated on page 2 of Appendix B-Fiscal Note for Proposed Rules. Title V fees are solely for the purpose of funding Title V program activities.
2. The definition of "air pollution" in Section 2.4 should include a reference to the "the act of a person," as "person" is defined in several other air regulations. This change should be made in order to be consistent with other regulations.
3. A six-month time period for the issuance of permits is much too long. A time period for permit issuance within 90 days would be much more beneficial to the Office of Air Quality, to the state of West Virginia, and to industry. When the permit application is submitted, the modeling, groundwork for best available control technology (BACT), and any other requirements necessary for application have been completed. Approving or disapproving the permit should not require six months. To be competitive with industry in neighboring states, West Virginia industry must be able to react to market conditions in a timely manner. Otherwise, employment and revenue leave West Virginia for other states that can more efficiently service industry's needs.

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45CSR19 Requirements for Pre-Construction Review, Determination of
Emission Offsets for Proposed New or Modified Stationary
Sources of Air Pollutants and Emission Trading for
Intrasource Pollutants.

1. The funding required for the Regulation 14 program cannot be obtained by utilizing Title V, Regulation 30 fees as stated on page 2 of Appendix B-Fiscal Note for Proposed Rules. Title V fees are solely for the purpose of funding Title V program activities.
2. The definition of "air pollution" in Section 2.4 should include a reference to the "the act of a person," as "person" is defined in several other air regulations. This change should be made in order to be consistent with other regulations.
3. Concerning the definition of "intrapollutant emission offsets," the proposed definition suggests that reductions of one type of particulate matter may not be used to offset emissions of another type of particulate matter. Mon Power and Potomac Edison do not support this position and believe there is no federal basis for this position. If the chemical composition of the particulate is similar and does not subject it to a different, more stringent, air quality standard, emission offsets should be creditable.
4. Concerning the definition of "major modification for ozone," Mon Power and Potomac Edison recommend the following:

"Major modification for ozone" means a significant net emissions increase of volatile organic compounds (VOC) or NO_x.
5. A six-month time period for the issuance of permits is much too long. A time period for permit issuance within 90 days would be much more beneficial to the Office of Air Quality, to the state of West Virginia, and to industry. When the permit application is submitted, the modeling, groundwork for lowest

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achievable emission rate (LAER), offset calculations, and any other requirements necessary for application have been completed. Approving or disapproving the permit should not require six months. To be competitive with industry in neighboring states, West Virginia industry must be able to react to market conditions in a timely manner. Otherwise, employment and revenue leave West Virginia for other states that can more efficiently service industry's needs.

Mon Power, Potomac Edison and APSC reserve the ability to modify, add to, or delete these comments prior to issuance of acceptable final rules. The submittal of these comments is not intended as a waiver of any rights or privileges to which Mon Power, Potomac Edison and/or APSC may be entitled by law, equity, practice or court order.

Mon Power and Potomac Edison appreciate the opportunity to comment on proposed legislative rules 45CSR14 and 45CSR19. We look forward to working with the Office of Air Quality in order to obtain regulations that will protect the environment of West Virginia, while at the same time, allow industry to locate, expand, and prosper in this state. Should you need additional information or have any comments, please call Yvonne Clarkson at (412) 830-5686 or myself at (412) 838-6806.

Sincerely,

J.T. Murphy for L.D. Myers
L. D. Myers

YFC/sjp

bcc: G. A. Jack - Fairmont
J. N. Kostik
J. T. Murphy
T. C. Perry
N. J. Smith

COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
REGARDING PROPOSED AMENDMENTS TO THE
RULES CONCERNING
PREVENTION OF SIGNIFICANT DETERIORATION
45 CSR 14

I. INTRODUCTION.

On June 21, 1994, the West Virginia Division of Environmental Protection ("DEP" or "Division") filed with the Secretary of State a proposed rule which would amend existing 45 CSR Series 14, covering permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration. Accompanying the proposed rule was a notice requesting both written and oral comment. Pursuant to this notice, the West Virginia Manufacturers Association ("WVMA") has undertaken a review of the proposed rule, and files these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout the State of West Virginia. In keeping with the WVMA's supportive position regarding the development of West Virginia's air pollution control program, the WVMA offers these comments as a means to facilitate progress toward a reasonable and protective program, consistent with the requirements of the Clean Air Act respecting permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration as well as those of the counterpart federal regulations.

The WVMA believes that upon amendment of this and other rules derived from federally-delegated programs, a review must be

undertaken to align it consistent with its federal counterpart or to justify any continuing departures, as required by statute. Accordingly, these comments engage in that comparison and critique.

II. COMMENTS.

1. Proposed use of Funds Derived from Operating Permit Program.

In the Fiscal Note attached to the proposed rule, the Chief of the Office of Air Quality ("Chief") states that costs incurred to implement this rule will come from the funds authorized under 45 CSR 30. This proposed financing is directly contrary to W. Va. Code § 22-5-4(a)(17)(E), which provides that fees, penalties and interest collected for operating permits (i.e., under 45 CSR 30) "shall be expended solely to cover. . . costs required to administer the operating permit program." Accordingly, The WVMA objects to the proposed use of funds collected under 45 CSR 30 to implement this construction permit rule. Funding to implement this rule should come from the State's general revenue or other Regulation 22 fees, and WVMA recommends that the Chief make appropriate revision to the Fiscal Note in the filing with the Secretary of State of the agency final rule.

2. Proposed 45 CSR 14-1.5 -- Incorporation by Reference.

Although the proposed rule does not per se incorporate by reference counterpart federal regulations, several provisions contained therein make reference to parts of the federal

regulations (e.g., proposed Section 2.32, proposed Section 10.7). The WVMA recommends that this proposed Section be revised so as to ensure that subsequent revisions to the federal regulations which occur after the effective date of the final rule will not lead to confusion regarding applicable requirements. Such revision is also necessary to comply with the State's rulemaking procedure, which prohibits incorporating future changes in federal regulations without amendment or formal rulemaking. To avoid these potential problems, the following sentence should be added to the end of the Section:

Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will, for purposes of this rule, be construed as that version which was in effect as of July 1, 1994.

3. Proposed 45 CSR 14-1.6 -- Determination of Stringency.

The WVMA asserts that it is inappropriate to incorporate this Section into the actual proposed rule. Pursuant to W. Va. Code § 22-1-3a, where rules promulgated by the Director will be more stringent or less stringent than their federal counterpart, the Director is required to provide a written statement, setting out specific reasons which demonstrate that each particular, substantive provision that varies from the federal counterpart regulation is (in the case of a more stringent rule) or is not (in the case of a less stringent rule) "reasonably necessary to protect, preserve or enhance the quality of West Virginia's

environment or human health or safety."¹ The statement required of the Director must take into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the Director in making the preceding determination. Accordingly, to comply with the legislative mandate, the Director's statement needs to be detailed and address specific provisions.

The WVMA submits that the statement required from the Director should not be included as a section in the rule itself, but, instead, should be attached to each proposed rule filed with the Secretary of State as an addendum. The legislature did not contemplate that the Director's statement regarding stringency of specific provisions in a proposed rule would be incorporated into the rule and thereby be adopted as law. This proposed Section should, therefore, be deleted from the final rule, and, after examining the proposed rule, the Director should publish an appropriate analysis with the agency final rule.

4. Proposed 45 CSR 14-1.7 -- Constitutional Takings Determination.

The WVMA asserts that it is also inappropriate to incorporate this Section into the actual proposed rule. A "constitutional takings determination" or assessment is only required in limited circumstances. Under W. Va. Code § 22-1A-3(a), such an assessment is not required, unless the action being contemplated by the

¹ This requirement is subject to certain limited exceptions - none of which are applicable to the immediate circumstances.

Division is:

*reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her property * * * .*

Promulgation of a new rule or amendment of an existing rule does not automatically meet the above test for when an assessment is required. W. Va. Code § 22-1A-3(c) expressly exempts rulemaking which simply limits uses pursuant to statute from the assessment requirement. In pertinent part, that Code section provides that the following actions do not require an assessment:

(1) *Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations;*

(2) *Rules and emergency rules of the division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; * * * .*

See W. Va. Code § 22-1A-3(c)(1) and (2). Accordingly, the WVMA recommends that this proposed Section be deleted from the final rule and that the Director's determination explanation be made a part of the rule rationale filed with the Secretary of State with the agency final rule. The Legislature did not intend that such "takings" determination become a matter of law by virtue of adoption of a rule containing such a recitation.

5. Proposed 45 CSR 14-2.1 -- definition of "Actual Emissions."

This proposed Section generally tracks the federal counterpart regulation found at 40 C.F.R. § 51.166(b)(21). However, the last sentence of proposed Subsection 2.1.d varies from the corresponding

sentence in 40 C.F.R. § 51.166(b)(21)(v), and, as written, may result in confusion with regard to the precise application of the extended demonstration period. To comport with its federal counterpart, the last sentence of Section 2.1.d should be revised to read as follows:

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 post-change operations.

However, if the rewording of the last sentence of proposed Subsection 2.1.d was an attempt on the part of the Division to improve the Subsection by eliminating the awkward phrase "post-change," that objective could be accomplished by revising the last sentence to read:

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.

The WVMA recommends that the Division adopt either of the foregoing suggested revisions.

6. Proposed 45 CSR 14-2.27 -- definition of "Major Modification."

Subsection 2.27.e fails to incorporate the substance of 40 C.F.R. § 51.166(b)(2)(iii)(e)(2), and is, therefore, more stringent than its federal counterpart. Accordingly, the WVMA recommends that this Subsection be revised to read as follows:

e. *Use of an alternative fuel or raw material, provided that:*

A. *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 after January 6, 1975; or

B. 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.

The above revisions will also clarify the meaning of the proposed rule and help ensure that the State's rule can and will be interpreted and applied consistently with its federal counterpart.

If the Director rejects the revision proposed above, then the WVMA requests that, in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a, the Director provide an appropriate written statement setting out the specific grounds for this inconsistency as well as any scientific or technical support for that determination.

The WVMA supports the Division's proposal to amend this definition to recognize the changes in the federal counterpart regulation, whereby (i) replacement or use of a pollution control project at an existing electric utility steam generating unit and (ii) temporary and permanent clean coal technology demonstration projects are eligible for exclusion from the category of "major modifications." These changes to the federal regulation resulted from the Seventh Circuit Court of Appeals decision in Wisconsin Elec. Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990), (the "WEPCO" decision). In what is frequently referenced as the WEPCO rulemaking, EPA amended the federal PSD and nonattainment NSR regulations as they pertain to utilities by adding the foregoing electric utility-related pollution control projects to the list of

activities excluded from the definition of physical or operational changes. See 57 FR 32314. In taking that action, the EPA stated that it was largely formalizing an existing policy under which individual pollution control projects had been excluded, where the EPA had found that the particular project "would be environmentally beneficial, taking into account ambient air quality." 57 FR at 32320. The WEPCO rulemaking also noted that EPA's existing policy was, and would continue to be, to allow permitting authorities to exclude pollution control projects in other source categories on a case-by-case basis. Id.

Since the WEPCO rulemaking, EPA has issued a guidance memorandum which indicates that a complete rulemaking with respect to exclusion of pollution control projects for other source categories is expected in early 1996. See July 1, 1994 Memorandum from John S. Seitz, Director Office of Air Quality Planning and Standards, to various Regional Air Office Directors regarding Pollution Control Projects and New Source Review Applicability ("1994 Guidance Document"). This 1994 Guidance Document details the Agency's interim policy on excluding such other pollution control projects, and sets forth substantive and procedural safeguards which permitting authorities are to follow in reviewing projects proposed for exclusion.

The basic substantive safeguards contained in the 1994 Guidance document are (i) that the reviewing authority determine that the proposed pollution control project will be environmentally beneficial, and (ii) that such pollution control project will not

cause or contribute to a violation of a NAAQS, PSD increment, or adversely impact an air quality related value ("AQRV") in a Class I area. See 1994 Guidance Document at p. 3. The 1994 Guidance Document also lists several types of pollution control projects which are presumed environmentally beneficial. See Id. at p. 5 of Attachment.

With respect to procedural safeguards, the 1994 Guidance Document requires (i) that the determination as to whether a proposed pollution control project qualifies for exclusion be made on a case-by-case basis, prior to beginning construction, and (ii) that the permitting authority afford the public an opportunity to review and comment on the source's application for exclusion. See 1994 Guidance Document at p. 3.

The WVMA urges the Division to incorporate amendments into this definition which would allow for exclusion of pollution control projects for other sources. Such a progressive action would promote the purposes of West Virginia's Air Pollution Control Act, W. Va. Code §§ 22-5-1 et seq., by creating greater incentive for industry to adopt pollution control measures. Based upon its review of the 1994 Guidance Document, the WVMA recommends that the following Subsection be added to the end of proposed Section 2.27:

m. Such other pollution control projects as the Director determines on a case-by-case basis, taking into consideration both the reduction of the targeted pollutant(s) and any collateral effects, will not render the emission unit less environmentally beneficial, provided that;

A. The following types of other pollution control projects shall be presumed environmentally beneficial, unless the Director has reason to believe that the controls will not be designed, operated or maintained in a manner consistent with

standard and reasonable practices, that the project will result in a significant increase in utilization of the unit that is serviced by the control, or that collateral emissions created by use of the controls have not been addressed in accordance with Subsection 2.27.m.C of this rule;

(i) The installation of conventional and advanced flue gas desulfurization and sorbent injection for SO₂;

(ii) Electric precipitators, baghouses, high efficiency multiclones, and scrubbers for particulate matter or other pollutants;

(iii) Flue gas recirculation, low-NO_x burners, selective non-catalytic reduction and selective catalytic reduction for NO_x; and

(iv) Regenerative thermal oxidizers (RTO), catalytic oxidizers, condensers, thermal incinerators, flares and carbon absorbers for volatile organic compounds (VOC) and toxic air pollutants;

B. Such other pollution control project shall not cause or contribute to a violation of a national ambient air quality standard (NAAQS), prevention of significant deterioration (PSD) increment, or adversely affect visibility or any other air quality related value (AQRV) in a Class I area;

C. Where such other pollution control project would result in an increase of collateral emissions of non-targeted pollutants, the control project shall be reviewed to determine that such increase has been minimized and will not result in environmental harm. For purposes of this determination, an increase of non-targeted collateral emissions shall be considered minimized where, within the physical configuration and operational standards usually associated with such a control device or strategy, the source has taken reasonable measures to keep any collateral increase in emissions to a minimum;

D. Where such other pollution control project would result in an unacceptable increased risk due to the release of air toxics, that other pollution control project will not be considered environmentally beneficial;

E. The application for exclusion of such other pollution control project from the requirements of this rule shall be made prior to beginning construction, and the Director's proposed decision thereon shall be subject to public notice and opportunity provided for written comment from both the public and EPA, except that such public notice and comment need not be provided where;

(i) The SIP exempts a class or category of pollution control projects from the minor source permitting public notice and comment requirements;

(ii) No increase in collateral emissions are expected as a result of installation of the other pollution control project (e.g., the installation of a baghouse); and

(iii) The proposed other pollution prevention project complies with all otherwise applicable environmental safeguards.

In recommending adoption of the foregoing, the WVMA notes that the 1994 Guidance Document provides that "in order to use this policy" State or local permitting authorities "should provide statements to EPA describing and affirming the basis for its authority to impose these safeguards absent major NSR." The WVMA believes that W. Va. Code § 22-5-11 vests the Division with authority to adopt this proposed revision.

Consistent with its recommendation that the Division incorporate the foregoing exclusion for "other pollution control projects" the WVMA recommends that the Division adopt the following definition for that term:

"Other Pollution Control Project" means any physical or operational change to an existing major source, other than an electric utility steam generating unit, the primary function of which is to reduce or eliminate the emission or release of a regulated air pollutant or pollutants into the environment, provided that:

a. Fabrication, manufacture or production of pollution control/prevention equipment and inherently less-polluting fuels or raw materials shall not be considered pollution control projects;

b. Recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal shall not be considered a pollution control project;

c. A switch to an inherently less-polluting fuel which meets the foregoing criteria, including any activity necessary to accommodate such switch, shall be considered a pollution control

project;

d. A switch to an inherently less-polluting raw material or process which meets the foregoing criteria, including any activity necessary to accommodate such switch, shall be considered a pollution control project; and

e. Process changes, product reformulation or redesign which meet the foregoing criteria shall be considered pollution control projects.

This suggested definition is consistent with that contained in the 1994 Guidance Document, and will further clarify the scope of the exclusion being proposed by the WVMA.

7. Proposed 45 CSR 14-2.29 -- definition of "Major Source Baseline Date."

This proposed definition omits the substance of the corresponding federal regulation found at 40 C.F.R. § 51.166(b)(14)(iii). To avoid inconsistency with the federal regulation and to further clarify the rule, this Section should be revised to read as follows:

2.29.a. "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.

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

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

B. 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.

8. Proposed 45 CSR 14-2.30 -- definition of "Major Stationary Source."

This proposed definition omits the substance of the corresponding federal regulation found at 40 C.F.R. § 51.166(b)(1)(i)(c)(iii). The omitted provision, in substance provides that, except in relation to certain specified types of sources, fugitive emissions are not to be considered when determining whether a source is a major source.

The WVMA considers inclusion of an analogous provision essential to the definition of "Major Stationary Source." If the definition is not revised to incorporate the substance of 40 C.F.R. § 51.166(b)(1)(i)(c)(iii), the inconsistency could cause an undue number of sources located in West Virginia to be categorized as "Major Stationary Sources" subject to the rules and regulations applicable to same. This inconsistency will also work against the economic interests of the State by making it less attractive for businesses to locate in West Virginia relative to other states where fugitive emissions are not factored into the determination. Finally, absent a provision analogous to 40 C.F.R. § 51.166(b)(1)(i)(c)(iii), the proposed rule would be more stringent than its federal counterpart, if applied dissimilarly. The EPA does not require fugitives to be counted, even on a discretionary basis, for sources other than those specifically listed for which fugitives are a potentially significant component of total emissions.

The WVMA recognizes that, under Section 15.2 of the proposed rule, a person proposing to construct, modify, or relocate a source may petition to exclude fugitive emissions when calculating the potential to emit. However, the WVMA wishes to point out that the federal regulations found at 40 C.F.R. § 51.166 contain no such petition requirement. The petition requirement provides no guarantee that the petition will be granted, and, thus, introduces an added element of uncertainty into the permitting process. Further, there is no requirement in proposed Section 15.2 that the

Director provide any specific type of written notice which states the grounds for denying a petition. Apart from failing to provide any assurance of consistency, this may violate the permit applicant's right to due process. Moreover, the petition requirement places further administrative burdens on the Agency and applicant for no apparent environmental benefit. Even if fugitives are not included in the "potential to emit" calculation, such emissions at the source will be subject to the limitations and standards specified in other rules of the Division.

Accordingly, unless this Section is revised to incorporate a provision analogous to 40 C.F.R. § 51.166(b)(1)(i)(c)(iii), the WVMA requests that, in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a, the Director provide an appropriate written statement setting out the specific grounds for this inconsistency as well as any scientific or technical support for that determination.

9. Proposed 45 CSR 14-2.32 -- definition of "Minor Source Baseline Date."

This proposed definition needs to be revised so as to clarify its applicability and to remain consistent with the corresponding federal regulation. As proposed, this definition does not track the federal definition found at 40 C.F.R. § 51.166(b)(14)(ii), and omits completely the substance of 40 C.F.R. § 51.166(b)(14)(iv). Further, the term "Trigger Date," which is essential to this definition, is set out in proposed Section 2.51 of the rule without any reference to proposed Section 2.32 or its significance to

determining the "Minor Source Baseline Date." The WVMA recommends that this proposed definition be revised consistent with the federal regulation.

In addition, it is unclear whether Subsection 2.32.a.B should appear under the definition of "Minor Source Baseline Date." Subparagraph (b) of 40 C.F.R. § 51.166(b)(14)(iii), the corresponding federal regulation, is directed at major sources and major modifications. Consistent with its preceding comments regarding the definition of "Major Source Baseline Date," the WVMA recommends that Subsection 2.32.a.B be deleted from the immediate definition.

10. Proposed 45 CSR 14-2.35 -- definition of "PM10."

The following revisions are needed to conform this proposed definition with the corresponding federal regulation found at 40 C.F.R. § 51.100(qq):

- (1) the phrase "described in" should be deleted and replaced with "based on" ; and
- (2) the phrase "and designated in accordance with 40 CFR 53 or by an equivalent method designated in accordance with 40 CFR 53" should be inserted at the end of the definition.

11. Proposed 45 CSR 14-2.36 -- definition of "Particulate Matter."

The following revisions are needed to conform this proposed definition with the corresponding federal regulation found at 40 C.F.R. § 51.100(cc):

- (1) the phrase "airborne finely divided solid or liquid" should be inserted immediately before the word "material"

; and

- (2) the phrase "exists in a finely divided form as a liquid or solid" should be deleted from the end of the proposed definition and replaced with the phrase "has an aerodynamic diameter smaller than 100 micrometers."

If the Director rejects the revisions proposed above, then the definition will be more stringent than its federal counterpart, and the WVMA requests that, in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a, the Director provide an appropriate written statement setting out the specific grounds for this inconsistency as well as any scientific or technical support for that determination.

12. Proposed 45 CSR 14-2.44 -- definition of "Representative Actual Annual Emissions."

Proposed Subsection 2.44.a appears to have been adapted from the federal counterpart regulation found at 40 C.F.R. § 51.166(b)(32)(i). However, as written, the phrase "filings with the Director or USEPA" contained in proposed Subsection 2.44.a would limit the applicability of this provision to filings with the State or Federal air pollution control authorities. This phrase is used in the context of specifying that the reviewing authority "shall consider all relevant information" in projecting future emissions from a source. The WVMA believes that limiting relevant information in this manner may exclude from consideration filings with other regulatory authorities which are likely to be of great value in making the required projection. For example, projections of future emissions are dependent upon projections of future source

operation, which, for utility facilities, are represented in filings with the Federal Energy Regulatory Commission and the West Virginia Public Service Commission. Moreover, excluding filings with other regulatory authorities from consideration would render this Section of the rule more stringent than its federal counterpart. Accordingly, the WVMA recommends that the phrase "filings with the Director or USEPA" which appears in Subsection 2.44.a of the proposed rule be replaced with the phrase "filings with the State or Federal regulatory authorities."

If the Director rejects this proposed revision, then the WVMA requests that, in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a, the Director provide an appropriate written statement setting out the specific grounds for this inconsistency as well as any scientific or technical support for that determination.

13. Proposed 45 CSR 14-2.46 -- definition of "Significant."

The following revisions are needed to conform this proposed definition with the corresponding federal regulation found at 40 C.F.R. § 51.166(b)(23):

- (1) the phrase "Notwithstanding Subsection 2.46.a," should be added at the beginning of Subsection 2.46.c; and
- (2) the phrase "or any net emissions increase" should be inserted before the word "associated" in Subsection 2.46.c.

In addition, while the WVMA wishes to commend the Division for adopting language in Subsection 2.46.b which would exclude the hazardous pollutants listed in § 112 of the federal Clean Air Act

("CAA") from this rule's application, the WVMA must point out that the Division has failed to delete certain of such pollutants from the list set out in proposed Subsection 2.46.a. Specifically, the list in Subsection 2.46.a includes asbestos, beryllium, mercury, and vinyl chloride - all of which are listed in CAA § 112(b)(1). Consistent with CAA § 112(b)(6), which provides that "[t]he provisions of Part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section," the WVMA requests that these pollutants and their emission rates be removed from the definition of "Significant."

If the Director rejects the revisions proposed above, then the definition will be more stringent than its federal counterpart, and the WVMA requests that, in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a, the Director provide an appropriate written statement setting out the specific grounds for this inconsistency as well as any scientific or technical support for that determination.

14. Proposed 45 CSR 14-2.47 -- definition of "Significant Impact."

This term does not appear relevant to any of the determinations required under this rule, and is not defined in the federal counterpart regulations found at 40 C.F.R. § 51.166. Accordingly, the WVMA recommends that this proposed definition be deleted from the final rule.

15. Proposed 45 CSR 14-3 -- Ambient Air Quality Ceilings.

To make the proposed rule more user-friendly, the WVMA recommends that the heading of this Section be revised to read: "Ambient Air Quality Increments and Ceilings."

In addition, to comport with the corresponding federal regulation found at 40 C.F.R. § 51.166(c) the following phrase should be inserted at the beginning of Subsection 3.1 : "In areas designated as Class I, II, or III,". This revision would also lend greater clarity to the proposed rule.

16. Proposed 45 CSR 14-5 -- Prohibition of Dispersion Enhancement Techniques.

The WVMA suggests that the following revisions would add greater clarity to the proposed rule:

- (1) the word "existed" should be inserted immediately before the word "or" in Subsection 5.1; and
- (2) the word "existed" which appears immediately before the phrase "before December 31, 1970" should be deleted and replaced with the phrase "was implemented".

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

The WVMA wishes to confirm that the Director will not require all permit applicants to provide the items of information specified in Subsections d and e of 6.2. Under Subsection 6.2.d, the applicant would be required to include the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact. Subsection

6.2.e would require the applicant to compile a study of all air quality impacts as well as the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred in the area that the source would affect since 1977, and then provide this with the permit application. The corresponding federal regulations require only that this information be supplied upon request, and do not contemplate that it will be required in every permit application. See 40 C.F.R. § 51.166(n)(3)(i) and (ii). Requiring this information in every permit application would impose a significant burden on the regulated community, and increase the administrative burden placed on the Division. The WVMA submits that it is not appropriate to require this information in all permit situations, and requests a change in language to state that the Director will require such information only in situations where it is reasonable to do so.

In addition, the proposed Section's applicability would be clarified if the word "actual" were inserted immediately after the phrase "commencement of" which appears in Subsection 6.1.

18. Proposed 45 CSR 14-7 -- Requirements Relating to Control Technology.

The phrase "each applicable emissions limitation promulgated by the Director and any other federally enforceable emissions limitation" which appears at the end of Subsection 7.1 does not equate with "each applicable limitation under the SIP and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61" found in the federal counterpart to that

Subsection, 40 C.F.R. § 51.166(j)(1). Therefore, the WVMA recommends that the phrase contained in the proposed Subsection be replaced with that found in the federal counterpart.

For purposes of clarity, the WVMA recommends that the word "new" be inserted immediately before the phrase "major stationary source" in proposed Subsection 7.2. This would comport with the corresponding federal regulation found at 40 C.F.R. § 51.166(j)(2).

Finally, the phrase "or relocate" which appears in proposed Subsections 7.1 and 7.2 and the phrase "or relocation" which appears in proposed Subsection 7.4 do not appear in the corresponding federal regulations found at 40 C.F.R. § 51.166(j)(1), (2), and (4). Since the federal counterpart does not use this term, the proposed rule would be more stringent than its federal counterpart. Therefore, the WVMA recommends that these references to "relocation" be omitted from the final rule.

If the Director rejects the revisions proposed above, then the definition will be more stringent than its federal counterpart, and the WVMA requests that, in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a, the Director provide an appropriate written statement setting out the specific grounds for this inconsistency as well as any scientific or technical support for that determination.

19. Proposed 45 CSR 14-12 -- Additional Requirements and Variances for Sources Impacting Federal Class I Areas.

To clarify the scope of proposed Subsection 12.2 and ensure consistency with 40 C.F.R. § 51.166(p)(3), the WVMA recommends that

the phrase "Federal mandatory" be inserted immediately after the phrase "values (including visibility) of any" in that Subsection.

In addition, the references to "40 CFR 52.21" in Subsection 12.3 should be replaced with "40 CFR 51.166". Part 52 consists of EPA's own rules for prevention of significant deterioration, which apply to federally administered programs. Subsection 12.3 should also be revised to incorporate the provision for Class I variances found in 40 C.F.R. § 51.166(p)(4). Section 51.166(p)(4) in substance provides that the owner/operator may demonstrate to the federal land manager that emissions from a proposed source would have no adverse impact on the air quality values of 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, and that, if the federal land manager concurs with the demonstration and so certifies to the State, then the Director could issue a permit; provided that certain assurances are given and requirements met.

20. Proposed 45 CSR 14-13 -- Procedures for Sources Employing Innovative Control Technology.

The word "employ" which appears in proposed Section 13.1 should be deleted and replaced with the phrase "approve a system of". This would serve to clarify the proposed rule. Also, to comport with the federal counterpart, the reference to "40 CFR 52" in Subsection 13.1.e should be replaced with a reference to "40 CFR 51.166". See 40 C.F.R. § 51.166(s)(vi).

21. Proposed 45 CSR 14-15 -- Procedures for Exemptions from Specific Sections of this Rule.

As an overall comment, the WVMA wishes to state its objection to use of petitions as a procedure for granting exemptions. An applicant should be entitled to an exemption, so long as the requisite factual information is provided in the permit application. In short, once an applicant has demonstrated that the criteria for an exemption have been met, the exemption should be allowed. This process should not involve discretion on the part of the Division. Using a petition procedure unnecessarily complicates and lends an air of uncertainty to the process of permit issuance. Further, the petition procedure forces the Division to incur an undue burden of administration. The WVMA believes that the State's economic interests would be better served if Section 15 were reworked so as to eliminate the petition process. Moreover, the absence of any obligation on the Director to inform the applicant in writing regarding the reasons for denial of a petition and appeal rights, may infringe on the applicant's right to due process. Finally, none of the federal regulations upon which the exemptions found in Section 15 are based contain a petition requirement. See 40 C.F.R. § 51.166(i)(4)(i); 40 C.F.R. § 51.166(i)(4)(ii); 40 C.F.R. § 51.166(i)(4)(iii); 40 C.F.R. § 51.166(i)(6); 40 C.F.R. § 51.166(i)(7); 40 C.F.R. § 51.166(i)(8); 40 C.F.R. § 51.166(m)(1)(v).

While the WVMA applauds the Division for incorporating many of the non-mandatory exemptions from 40 C.F.R. § 51.166(i) into the proposed rule, the WVMA wishes to raise with the Agency the

possibility of incorporating those exemptions found in 40 C.F.R. § 51.166(i)(5), (11), and (12). An exemption analogous to 40 C.F.R. § 51.166(i)(5) would provide that the requirements of proposed Sections 7 through 11 do not apply to major stationary sources or major modifications with respect to a particular pollutant, if the owner or operator demonstrates that, as to such pollutant, the source or modification is located in an area designated as nonattainment under section 107 of the Clean Air Act. This is logical and would ease the burden on both the Agency and the regulated community. The exemptions found in 40 C.F.R. § 51.166(i)(11) and (12) really only recognize that revisions to the rule that occur after a permit application is deemed administratively complete, should not affect the particular permit application. Although the latter two exemptions are limited in scope (i.e., to the maximum allowable increase to nitrogen oxides and PM10), including them in the final rule may save some applicants the cost, expense and inequitable result of having to begin the permit application process anew. Accordingly, the WVMA suggests that it would be appropriate to incorporate these remaining exemptions into the proposed rule.

As presently worded, the last "bullet" contained in Table 2 would require any source category "being regulated under section 110 or 111 of the Clean Air Act" to include fugitive emissions in calculating the potential to emit. This appears to be a typographical error and is inconsistent with and considerably more stringent than the federal counterpart found at 40 C.F.R. §

51.166(b)(1)(iii)(aa), which requires fugitive emissions to be included in that calculation for any source category "being regulated under section 111 or 112 of the Act." Accordingly, the WVMA requests that the language found in the federal counterpart be substituted for the currently proposed language. If the Director rejects this proposed revision, the WVMA requests an appropriate statement in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a.

To clarify the proposed rule and maintain consistency with its federal counterpart found at 40 C.F.R. § 51.166(i)(8), the WVMA recommends that the following language be added at the bottom of Table 3:

No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to the PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

Finally, the WVMA notes that the phrase "or relocate" which is used in proposed Subsections 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, and 15.7, does not appear in the counterpart federal regulations. Absent justification for use of this term, the WVMA requests that it be deleted from the final rule. Again, if the Director rejects this proposed revision, the WVMA requests an appropriate statement in accordance with W. Va. Code § 22-5-4(a)(4) and W. Va. Code § 22-1-3a.

22. Proposed 45 CSR 14-16 -- Public Review Procedures.

The requirements imposed under the various provisions of this proposed Section generally parallel the corresponding federal

regulation found at 40 C.F.R. § 51.166(q). However, under the federal regulation and State law, all of these provisions are to be carried out "within one year after receipt of a complete application." See 40 C.F.R. § 51.166(q)(2); W. Va. Code § 22-5-11. In order to ensure that the West Virginia rule is no less stringent than the federal regulation, the WVMA recommends that language requiring a permit to be issued or denied as expeditiously as practicable, but no later than 12 months after receipt of a complete application be inserted either (i) at the beginning of proposed Section 16 in a manner which makes clear that this time limitation applies to all of the provisions which follow, or (ii) at the beginning of each provision (i.e., Section 16.1 through 16.7). In order to make this needed revision, the phrase "After finishing the review" which appears at the beginning of Section 16.1, should either be (i) deleted, or (ii) replaced with the foregoing phrase.

III. CONCLUSION.

The WVMA appreciates having this opportunity to present our comments and suggestions. We acknowledge the difficulties of keeping pace with changing federal requirements and endorse the Office of Air Quality's responsible approach of doing this yearly, as necessary. In a program as complex as prevention of significant deterioration, it is especially important that the State and federal programs mirror one another so that unintended misapplication and misinterpretation may be avoided.

Respectfully submitted, this the 29th day of July, 1994.

Karen S. Price, President
West Virginia Manufacturers Association
2001 Quarrier Street
Charleston, West Virginia 25311
Telephone: 342-2123

Prepared by:

Robinson & McElwee
P. O. Box 1791
Charleston, West Virginia 25326

Contact:

Kim Brown Poland, Esquire
Telephone: 347-8348



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

JUL 1 1994

MEMORANDUM

SUBJECT: Pollution Control Projects and New Source Review (NSR)
Applicability

FROM: John S. Seitz, Director
Office of Air Quality Planning and Standards (MD-10)

TO: Director, Air, Pesticides and Toxics
Management Division, Regions I and IV
Director, Air and Waste Management Division,
Region II
Director, Air, Radiation and Toxics Division,
Region III
Director, Air and Radiation Division,
Region V
Director, Air, Pesticides and Toxics Division,
Region VI
Director, Air and Toxics Division,
Regions VII, VIII, IX and X

This memorandum and attachment address issues involving the Environmental Protection Agency's (EPA's) NSR rules and guidance concerning the exclusion from major NSR of pollution control projects at existing sources. The attachment provides a full discussion of the issues and this policy, including illustrative examples.

For several years, EPA has had a policy of excluding certain pollution control projects from the NSR requirements of parts C and D of title I of the Clean Air Act (Act) on a case-by-case basis. In 1992, EPA adopted an explicit pollution control project exclusion for electric utility generating units [see 57 FR 32314 (the "WEPCO rule" or the "WEPCO rulemaking")]. At the time, EPA indicated that it would, in a subsequent rulemaking, consider adopting a formal pollution control project exclusion for other source categories [see 57 FR 32332]. In the interim, EPA stated that individual pollution control projects

OPTIONAL FORM 99 (7-93)

FAX TRANSMITTAL

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To
Brian Hopkins
Dept./Agency

From
D. Church
Project #
919-541-5389

involving source categories other than utilities could continue to be excluded from NSR by permitting authorities on a case-by-case basis [see 57 FR at 32320]. At this time, EPA expects to complete a rulemaking on a pollution control project exclusion for other source categories in early 1996. This memorandum and attachment provide interim guidance for permitting authorities on the approvability of these projects pending EPA's final action on a formal regulatory exclusion.

The attachment to this memorandum outlines in greater detail the type of projects that may qualify for a conditional exclusion from NSR as a pollution control project, the safeguards that are to be met, and the procedural steps that permitting authorities should follow in issuing an exclusion. Projects that do not meet these safeguards and procedural steps do not qualify for an exclusion from NSR under this policy. Pollution control projects potentially eligible for an exclusion (provided all applicable safeguards are met) include the installation of conventional or innovative emissions control equipment and projects undertaken to accommodate switching to an inherently less-polluting fuel, such as natural gas. Under this guidance, States may also exclude as pollution control projects some material and process changes (e.g., the switch to a less polluting coating, solvent, or refrigerant) and some other types of pollution prevention projects undertaken to reduce emissions of air pollutants subject to regulation under the Act.

The replacement of an existing emissions unit with a newer or different one (albeit more efficient and less polluting) or the reconstruction of an existing emissions unit does not qualify as a pollution control project. Furthermore, this guidance only applies to physical or operational changes whose primary function is the reduction of air pollutants subject to regulation under the Act at existing major sources. This policy does not apply to air pollution controls and emissions associated with a proposed new source. Similarly, the fabrication, manufacture or production of pollution control/prevention equipment and inherently less-polluting fuels or raw materials are not pollution control projects under this policy (e.g., a physical or operational change for the purpose of producing reformulated gasoline at a refinery is not a pollution control project).

It is EPA's experience that many bona fide pollution control projects are not subject to major NSR requirements for the simple reason that they result in a reduction in annual emissions at the source. In this way, these pollution control projects are outside major NSR coverage in accordance with the general rules for determining applicability of NSR to modifications at existing sources. However, some pollution control projects could result in significant potential or actual increases of some pollutants. These latter projects comprise the subcategory of pollution control projects that can benefit from this guidance.

A pollution control project must be, on balance, "environmentally beneficial" to be eligible for an exclusion. Further, an environmentally-beneficial pollution control project may be excluded from otherwise applicable major NSR requirements only under conditions that ensure that the project will not cause or contribute to a violation of a national ambient air quality standard (NAAQS), prevention of significant deterioration (PSD) increment, or adversely affect visibility or other air quality related value (AQRV). In order to assure that air quality concerns with these projects are adequately addressed, there are two substantive and two procedural safeguards which are to be followed by permitting authorities reviewing projects proposed for exclusion.

First, the permitting authority must determine that the proposed pollution control project, after consideration of the reduction in the targeted pollutant and any collateral effects, will be environmentally beneficial. Second, nothing in this guidance authorizes any pollution control project which would cause or contribute to a violation of a NAAQS, or PSD increment, or adversely impact an AQRV in a class I area. Consequently, in addition to this "environmentally-beneficial" standard, the permitting authority must ensure that adverse collateral environmental impacts from the project are identified, minimized, and, where appropriate, mitigated. For example, the source or the State must secure offsetting reductions in the case of a project which will result in a significant increase in a nonattainment pollutant. Where a significant collateral increase in actual emissions is expected to result from a pollution control project, the permitting authority must also assess whether the increase could adversely affect any national ambient air quality standard, PSD increment, or class I AQRV.

In addition to these substantive safeguards, EPA is specifying two procedural safeguards which are to be followed. First, since the exclusion under this interim guidance is only available on a case-by-case basis, sources seeking exclusion from major NSR requirements prior to the forthcoming EPA rulemaking on a pollution control project exclusion must, before beginning construction, obtain a determination by the permitting authority that a proposed project qualifies for an exclusion from major NSR requirements as a pollution control project. Second, in considering this request, the permitting authority must afford the public an opportunity to review and comment on the source's application for this exclusion. It is also important to note that any project excluded from major new source review as a pollution control project must still comply with all otherwise applicable requirements under the Act and the State implementation plan (SIP), including minor source permitting.

This guidance document does not supersede existing Federal or State regulations or approved SIP's. The policies set out in this memorandum and attachment are intended as guidance to be applied only prospectively (including those projects currently under evaluation for an exclusion) during the interim period until EPA takes action to revise its NSR rules, and do not represent final Agency action. This policy statement is not ripe for judicial review. Moreover, it is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. Agency officials may decide to follow the guidance provided in this memorandum, or to act at variance with the guidance, based on an analysis of specific circumstances. The EPA also may change this guidance at any time without public notice. The EPA presently intends to address the matters discussed in this document in a forthcoming NSR rulemaking regarding proposed changes to the program resulting from the NSR Reform process and will take comment on these matters as part of that rulemaking.

As noted above, a detailed discussion of the types of projects potentially eligible for an exclusion from major NSR as a pollution control project, as well as the safeguards such projects must meet to qualify for the exclusion, is contained in the attachment to this memorandum. The Regional Offices should send this memorandum with the attachment to States within their jurisdiction. Questions concerning specific issues and cases should be directed to the appropriate EPA Regional Office. Regional Office staff may contact David Solomon, Chief, New Source Review Section, at (919) 541-5375, if they have any questions.

Attachment

cc: Air Branch Chief, Regions I-X
NSR Reform Subcommittee Members

Attachment

GUIDANCE ON EXCLUDING POLLUTION CONTROL PROJECTS
FROM MAJOR NEW SOURCE REVIEW (NSR)

I. Purpose

The Environmental Protection Agency (EPA) presently expects to complete a rulemaking on an exclusion from major NSR for pollution control projects by early 1996. In the interim, certain types of projects (involving source categories other than utilities) may qualify on a case-by-case basis for an exclusion from major NSR as pollution control projects. Prior to EPA's final action on a regulatory exclusion, this attachment provides interim guidance for permitting authorities on the types of projects that may qualify on a case-by-case basis from major NSR as pollution control projects, including the substantive and procedural safeguards which apply.

II. Background

The NSR provisions of part C [prevention of significant deterioration (PSD)] and part D (nonattainment requirements) of title I of the Clean Air Act (Act) apply to both the construction of major new sources and the modification of existing major sources.¹ The modification provisions of the NSR programs in parts C and D are based on the broad definition of modification in section 111(a)(4) of the Act. That section contemplates a two-step test for determining whether activities at an existing major facility constitute a modification subject to new source requirements. In the first step, the reviewing authority determines whether a physical or operational change will occur. In the second step, the question is whether the physical or operational change will result in any increase in emissions of any regulated pollutant.

The definition of physical or operational change in section 111(a)(4) could, standing alone, encompass the most mundane activities at an industrial facility (even the repair or replacement of a single leaky pipe, or a insignificant change in the way that pipe is utilized). However, EPA has recognized that Congress did not intend to make every activity at a source subject to new source requirements under parts C and D. As a result, EPA has by regulation limited the reach of the modification provisions of parts C and D to only major modifications. Under NSR, a "major modification" is generally a physical change or change in the method of operation of a major stationary source which would result in a significant net emissions increase in the emissions of any regulated pollutant

¹The EPA's NSR regulations for nonattainment areas are set forth at 40 CFR 51.165, 52.24 and part 51, Appendix S. The PSD program is set forth in 40 CFR 52.21 and 51.166.

[see, e.g., 40 CFR 52.21(b)(2)(i)]. A "net emissions increase" is defined as the increase in "actual emissions" from the particular physical or operational change together with any other contemporaneous increases or decreases in actual emissions [see, e.g., 40 CFR 52.21(b)(3)(i)]. In order to trigger major new source review, the net emissions increase must exceed specified "significance" levels [see, e.g., 40 CFR 52.21(b)(2)(i) and 40 CFR 52.21(b)(23)]. The EPA has also adopted common-sense exclusions from the "physical or operational change" component of the definition of "major modification." For example, EPA's regulations contain exclusions for routine maintenance, repair, and replacement; for certain increases in the hours of operation or in the production rate; and for certain types of fuel switches [see, e.g., 40 CFR 52.21(b)(2)(iii)].

In the 1992 "WEPCO" rulemaking [57 FR 32314], EPA amended its PSD and nonattainment NSR regulations as they pertain to utilities by adding certain pollution control projects to the list of activities excluded from the definition of physical or operational changes. In taking that action, EPA stated it was largely formalizing an existing policy under which it had been excluding individual pollution control projects where it was found that the project "would be environmentally beneficial, taking into account ambient air quality" [57 FR at 32320; see also id., n. 15].²

The EPA has provided exclusions for pollution control projects in the form of "no action assurances" prior to November 15, 1990 and nonapplicability determinations based on Act changes as of November 15, 1990 (1990 Amendments). Generally, these exclusions addressed clean coal technology projects and fuel switches at electric utilities.

Because the WEPCO rulemaking was directed at the utility industry which faced "massive industry-wide undertakings of pollution control projects" to comply with the acid rain provisions of the Act [57 FR 32314], EPA limited the types of projects eligible for the exclusion to add-on controls and fuel switches at utilities. Thus, pollution control projects under the WEPCO rule are defined as:

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:

²This guidance pertains only to source categories other than electric utilities, and EPA does not intend for this guidance to affect the WEPCO rulemaking in any way.

(A) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide (SO₂) and nitrogen oxides (NO_x) controls and electrostatic precipitators;

(B) An activity or project to accommodate switching to a fuel which is less polluting than the fuel in use prior to the activity or project . . .

[40 CFR 51.165(a)(1)(xxv) (emphasis added)].
The definition also includes certain clean coal technology demonstration projects. Id.

The EPA built two safeguards into the exclusion in the rulemaking. First, a project that meets the definition of pollution control project will not qualify for the exclusion where the "reviewing authority determines that (the proposed project) renders the unit less environmentally beneficial . . ." [see, e.g., 51.165(a)(1)(v)(C)(8)]. In the WEPCO rule, EPA did not provide any specific definition of the environmentally-beneficial standard, although it did indicate that the pollution control project provision "provides for a case-by-case assessment of the pollution control project's net emissions and overall impact on the environment" [57 FR 32321]. This provision is buttressed by a second safeguard that directs permitting authorities to evaluate the air quality impacts of pollution control projects that could--through collateral emissions increases or changes in utilization patterns--adversely impact local air quality [see 57 FR 32322]. This provision generally authorizes, as appropriate, a permitting authority to require modelling of emissions increases associated with a pollution control project. Id. More fundamentally, it explicitly states that no pollution control project under any circumstances may cause or contribute to violation of a national ambient air quality standard (NAAQS), PSD increment, or air quality related value (AQRV) in a class I area. Id.³

³The WEPCO rule refers specifically to "visibility limitation" rather than "air quality related values." However, EPA clearly stated in the preamble to the final rule that permitting agencies have the authority to "solicit the views of others in taking any other appropriate remedial steps deemed necessary to protect class I areas. . . . The EPA emphasizes that all environmental impacts, including those on class I areas, can be considered. . . ." [57 FR 32322]. Further, the statutory protections in section 165(d) plainly are intended to protect against any "adverse impact on the AQRV of such [class I] lands

As noted, the WEPCO rulemaking was expressly limited to existing electric utility steam generating units [see, e.g., 40 CFR 51.165(a)(1)(v)(C)(8) and 51.165(a)(1)(xx)]. The EPA limited the rulemaking to utilities because of the impending acid rain requirements under title IV of the Act, EPA's extensive experience with new source applicability issues for electric utilities, the general similarity of equipment, and the public availability of utility operating projections. The EPA indicated it would consider adopting a formal NSR pollution control project exclusion for other source categories as part of a separate NSR rulemaking. The rulemaking in question is now expected to be finalized by early 1996. On the other hand, the WEPCO rulemaking also noted that EPA's existing policy was, and would continue to be, to allow permitting authorities to exclude pollution control projects in other source categories on a case-by-case basis.

III. Case-By-Case Pollution Control Project Determinations

The following sections describe the type of projects that may be considered by permitting authorities for exclusion from major NSR as pollution control projects and two safeguards that permitting authorities are to use in evaluating such projects--the environmentally-beneficial test and an air quality impact assessment. To a large extent, these requirements are drawn from the WEPCO rulemaking. However, because the WEPCO rule was designed for a single source category, electric utilities, it cannot and does not serve as a complete template for this guidance. Therefore, the following descriptions expand upon the WEPCO rule in the scope of qualifying projects and in the specific elements inherent in the safeguards. These changes reflect the far more complicated task of evaluating pollution control projects at a wide variety of sources facing a myriad of Federal, State, and local clean air requirements.

Since the safeguards are an integral component of the exclusion, States must have the authority to impose the safeguards in approving an exclusion from major NSR under this policy. Thus, State or local permitting authorities in order to use this policy should provide statements to EPA describing and affirming the basis for its authority to impose these safeguards absent major NSR. Sources that obtain exclusions from permitting authorities that have not provided this affirmation of authority are at risk in seeking to rely on the exclusion issued by the

(including visibility)." Based on this statutory provision, EPA believes that the proper focus of any air quality assessment for a pollution control project should be on visibility and any other relevant AQRV's for any class I areas that may be affected by the proposed project. Permitting authorities should notify Federal Land Managers where appropriate concerning pollution control projects which may adversely affect AQRV's in class I areas.

permitting agency, because EPA may subsequently determine that the project does not qualify as a pollution control project under this policy.

A. Types of Projects Covered

1. Add-On Controls and Fuel Switches

In the WEPCO rulemaking, EPA found that both add-on emissions control projects and fuel switches to less-polluting fuels could be considered to be pollution control projects. For the purposes of today's guidance, EPA affirms that these types of projects are appropriate candidates for a case-by-case exclusion as well. These types of projects include:

- the installation of conventional and advanced flue gas desulfurization and sorbent injection for SO_2 ;
- electrostatic precipitators, baghouses, high efficiency multiclones, and scrubbers for particulate or other pollutants;
- flue gas recirculation, low- NO_x burners, selective non-catalytic reduction and selective catalytic reduction for NO_x ; and
- regenerative thermal oxidizers (RTO), catalytic oxidizers, condensers, thermal incinerators, flares and carbon adsorbers for volatile organic compounds (VOC) and toxic air pollutants.

Projects undertaken to accommodate switching to an inherently less-polluting fuel such as natural gas can also qualify for the exclusion. Any activity that is necessary to accommodate switching to a inherently less-polluting fuel is considered to be part of the pollution control project. In some instances, where the emissions unit's capability would otherwise be impaired as a result of the fuel switch, this may involve certain necessary changes to the pollution generating equipment (e.g., boiler) in order to maintain the normal operating capability of the unit at the time of the project.

2. Pollution Prevention Projects

It is EPA's policy to promote pollution prevention approaches and to remove regulatory barriers to sources seeking to develop and implement pollution prevention solutions to the extent allowed under the Act. For this reason, permitting authorities may also apply this exclusion to switches to inherently less-polluting raw materials and processes and certain

other types of "pollution prevention" projects.⁴ For instance, many VOC users will be making switches to water-based or powder-paint application systems as a strategy for meeting reasonably available control technology (RACT) or switching to a non-toxic VOC to comply with maximum achievable control technology (MACT) requirements.

Accordingly, under today's guidance, permitting authorities may consider excluding raw material substitutions, process changes and other pollution prevention strategies where the pollution control aspects of the project are clearly evident and will result in substantial emissions reductions per unit of output for one or more pollutants. In judging whether a pollution prevention project can be considered for exclusion as a pollution control project, permitting authorities may also consider as a relevant factor whether a project is being undertaken to bring a source into compliance with a MACT, RACT, or other Act requirement.

Although EPA is supportive of pollution control and prevention projects and strategies, special care must be taken in classifying a project as a pollution control project and in evaluating a project under a pollution control project exclusion. Virtually every modernization or upgrade project at an existing industrial facility which reduces inputs and lowers unit costs has the concurrent effect of lowering an emissions rate per unit of fuel, raw material or output. Nevertheless, it is clear that these major capital investments in industrial equipment are the very types of projects that Congress intended to address in the new source modification provisions (see Wisconsin Electric Power Co. v. Reilly, 893 F.2d 901, 907-10 (7th Cir. 1990) (rejecting contention that utility life extension project was not a physical or operational change); Puerto Rican Cement Co., Inc. v. EPA, 889 F.2d 292, 296-98 (1st Cir. 1989) (NSR applies to modernization project that decreases emissions per unit of output, but increases economic efficiency such that utilization may increase and result in net increase in actual emissions)). Likewise, the replacement of an existing emissions unit with a newer or different one (albeit more efficient and less polluting) or the

⁴For purposes of this guidance, 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 and other pollutants to the environment (including fugitive emissions) prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal (see Pollution Prevention Act of 1990 section 6602(b) and section 6603(5)(A) and (B); see also "EPA Definition of 'Pollution Prevention,'" memorandum from F. Henry Habicht II, May 28, 1992).

reconstruction of an existing emissions unit would not qualify as a pollution control project. Adopting a policy that automatically excludes from NSR any project that, while lowering operating costs or improving performance, coincidentally lowers a unit's emissions rate, would improperly exclude almost all modifications to existing emissions units, including those that are likely to increase utilization and therefore result in overall higher levels of emissions.

In order to limit this exclusion to the subset of pollution prevention projects that will in fact lower annual emissions at a source, permitting authorities should not exclude as pollution control projects any pollution prevention project that can be reasonably expected to result in an increase in the utilization of the affected emissions unit(s). For example, projects which significantly increase capacity, decrease production costs, or improve product marketability can be expected to affect utilization patterns. With these changes, the environment may or may not see a reduction in overall source emissions; it depends on the source's operations after the change, which cannot be predicted with any certainty.⁵ This is not to say that these types of projects are necessarily subject to major NSR requirements, only that they should not be excluded as pollution control projects under this guidance. The EPA may consider different approaches to excluding pollution prevention projects from major NSR requirements in the upcoming NSR rulemaking. Under this guidance, however, permitting authorities should carefully review proposed pollution prevention projects to evaluate whether utilization of the source will increase as a result of the project.

Furthermore, permitting authorities should have the authority to monitor utilization of an affected emissions unit or source for a reasonable period of time subsequent to the project to verify what effect, if any, the project has on utilization. In cases where the project has clearly caused an increase in utilization, the permitting authority may need to reevaluate the basis for the original exclusion to verify that an exclusion is still appropriate and to ensure that all applicable safeguards are being met.

⁵This is in marked contrast to the addition of pollution control equipment which typically does not, in EPA's experience, result in any increase in the source's utilization of the emission unit in question. In the few instances where this presumption is not true, the safeguards discussed in the next section should provide adequate environmental protections for these additions of pollution control equipment.

B. Safeguards

The following safeguards are necessary to assure that projects being considered for an exclusion qualify as environmentally beneficial pollution control projects and do not have air quality impacts which would preclude the exclusion. Consequently, a project that does not meet these safeguards does not qualify for an exclusion under this policy.

1. Environmentally-Beneficial Test

Projects that meet the definition of a pollution control project outlined above may nonetheless cause collateral emissions increases or have other adverse impacts. For instance, a large VOC incinerator, while substantially eliminating VOC emissions, may generate sizeable NO_x emissions well in excess of significance levels. To protect against these sorts of problems, EPA in the WEPACO rule provided for an assessment of the overall environmental impact of a project and the specific impact, if any, on air quality. The EPA believes that this safeguard is appropriate in this policy as well.

Unless information regarding a specific case indicates otherwise, the types of pollution control projects listed in III. A. 1. above can be presumed, by their nature, to be environmentally beneficial. This presumption arises from EPA's experience that historically these are the very types of pollution controls applied to new and modified emissions units. The presumption does not apply, however, where there is reason to believe that 1) the controls will not be designed, operated or maintained in a manner consistent with standard and reasonable practices; or 2) collateral emissions increases have not been adequately addressed as discussed below.

In making a determination as to whether a project is environmentally beneficial, the permitting authority must consider the types and quantity of air pollutants emitted before and after the project, as well as other relevant environmental factors. While because of the case-by-case nature of projects it is not possible to list all factors which should be considered in any particular case, several concerns can be noted.

First, pollution control projects which result in an increase in non-targeted pollutants should be reviewed to determine that the collateral increase has been minimized and will not result in environmental harm. Minimization here does not mean that the permitting agency should conduct a BACT-type review or necessarily prescribe add-on control equipment to treat the collateral increase. Rather, minimization means that, within the physical configuration and operational standards usually associated with such a control device or strategy, the

source has taken reasonable measures to keep any collateral increase to a minimum. For instance, the permitting authority could require that a low-NO_x burner project be subject to temperature and other appropriate combustion standards so that carbon monoxide (CO) emissions are kept to a minimum, but would not review the project for a CO catalyst or other add-on type options. In addition, a State's RACT or MACT rule may have explicitly considered measures for minimizing a collateral increase for a class or category of pollution control projects and requires a standard of best practices to minimize such collateral increases. In such cases, the need to minimize collateral increase from the covered class or category of pollution control projects can be presumed to have been adequately addressed in the rule.

In addition, a project which would result in an unacceptable increased risk due to the release of air toxics should not be considered environmentally beneficial. It is EPA's experience, however, that most projects undertaken to reduce emissions, especially add-on controls and fuel switches, result in concurrent reductions in air toxics. The EPA expects that many pollution control projects seeking an exclusion under this guidance will be for the purpose of complying with MACT requirements for reductions in air toxics. Consequently, unless there is reason to believe otherwise, permitting agencies may presume that such projects by their nature will result in reduced risks from air toxics.

2. Additional Air Quality Impacts Assessments

(a) General

Nothing in the Act or EPA's implementing regulations would allow a permitting authority to approve a pollution control project resulting in an emissions increase that would cause or contribute to a violation of a NAAQS or PSD increment, or adversely impact visibility or other AQRV in a class I area [see, e.g., Act sections 110(a)(2)(C), 165, 169A(b), 173]. Accordingly, this guidance is not intended to allow any project to violate any of these air quality standards.

As discussed above, it is possible that a pollution control project--either through an increase in an emissions rate of a collateral pollutant or through a change in utilization--will cause an increase in actual emissions, which in turn could cause or contribute to a violation of a NAAQS or increment or adversely impact AQRV's. For this reason, in the WEPCO rule the EPA required sources to address whenever 1) the proposed change would result in a significant net increase in actual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis; and 2) the permitting

air quality (C)

authority has reason to believe that such an increase would cause or contribute to a violation of a NAAQS, increment or visibility limitation. If an air quality impact analysis indicates that the increase in emissions will cause or contribute to a violation of any ambient standard, PSD increment, or AQRV, the pollution control exclusion does not apply.

The EPA believes that this safeguard needs to be applied here as well. Thus, where a pollution control project will result in a significant increase in emissions and that increased level has not been previously analyzed for its air quality impact and raises the possibility of a NAAQS, increment, or AQRV violation, the permitting authority is to require the source to provide an air quality analysis sufficient to demonstrate the impact of the project. The EPA will not necessarily require that the increase be modeled, but the source must provide sufficient data to satisfy the permitting authority that the new levels of emissions will not cause a NAAQS or increment violation and will not adversely impact the AQRV's of nearby potentially affected class I areas.

In the case of nonattainment areas, the State or the source must provide offsetting emissions reductions for any significant increase in a nonattainment pollutant from the pollution control project. In other words, if a significant collateral increase of a nonattainment pollutant resulting from a pollution control project is not offset on at least a one-to-one ratio then the pollution control project would not qualify as environmentally beneficial.⁶ However, rather than having to apply offsets on a case-by-case basis, States may consider adopting (as part of their attainment plans) specific control measures or strategies for the purpose of generating offsets to mitigate the projected collateral emissions increases from a class or category of pollution control projects.

(b) Determination of Increase in Emissions

The question of whether a proposed project will result in an emissions increase over pre-modification levels of actual emissions is both complicated and contentious. It is a question that has been debated by the New Source Review Reform Subcommittee of the Clean Air Act Advisory Committee and is expected to be revisited by EPA in the same upcoming rulemaking that will consider adopting a pollution control project exclusion. In the interim, EPA is adopting a simplified approach

⁶Regardless of the severity of the classification of the nonattainment area, a one-to-one offset ratio will be considered sufficient under this policy to mitigate a collateral increase from a pollution control project. States may, however, require offset ratios that are greater than one-to-one.

to determining whether a pollution control project will result in increased emissions.

The approach in this policy is premised on the fact that EPA does not expect the vast majority of these pollution control projects to change established utilization patterns at the source. As discussed in the previous section, it is EPA's experience that add-on controls do not impact utilization, and pollution prevention projects that could increase utilization may not be excluded under this guidance. Therefore, in most cases it will be very easy to calculate the emissions after the change: the product of the new emissions rate times the existing utilization rate. In the case of a pollution control project that collaterally increases a non-targeted pollutant, the actual increase (calculated using the new emissions rate and current utilization pattern) would need to be analyzed to determine its air quality impact.

The permitting authority may presume that projects meeting the definition outlined in section III(A)(1) will not change utilization patterns. However, the permitting authority is to reject this presumption where there is reason to believe that the project will result in debottlenecking, loadshifting to take advantage of the control equipment, or other meaningful increase in the use of the unit above current levels. Where the project will increase utilization and emissions, the associated emissions increases are calculated based on the post-modification potential to emit of the unit considering the application of the proposed controls. In such cases the permitting agency should consider the projected increase in emissions as collateral to the project and determine whether, notwithstanding the emissions increases, the project is still environmentally beneficial and meets all applicable safeguards.

In certain limited circumstances, a permitting agency may take action to impose federally-enforceable limits on the magnitude of a projected collateral emissions increase to ensure that all safeguards are met. For example, where the data used to assess a projected collateral emissions increase is questionable and there is reason to believe that emissions in excess of the projected increase would violate an applicable air quality standard or significantly exceed the quantity of offsets provided, restrictions on the magnitude of the collateral increase may be necessary to ensure compliance with the applicable safeguards.

IV. Procedural Safeguards

Because EPA has not yet promulgated regulations governing a generally applicable pollution control project exclusion from major NSR (other than for electric utilities), permitting authorities must consider and approve requests for an exclusion

on a case-by-case basis, and the exclusion is not self-executing. Instead, sources must receive case-by-case approval from the permitting authority pursuant to a minor NSR permitting process, State nonapplicability determination or similar process. [Nothing in this guidance voids or creates an exclusion from any applicable minor source preconstruction review requirement in any SIP that has been approved pursuant to section 110(a)(2)(C) and 40 CFR 51.160-164.] This process should also provide that the application for the exclusion and the permitting agency's proposed decision thereon be subject to public notice and the opportunity for public and EPA written comment. In those limited cases where the applicable SIP already exempts a class or category of pollution controls project from the minor source permitting public notice and comment requirements, and where no collateral increases are expected (e.g., the installation of a bayhouse) and all otherwise applicable environmental safeguards are complied with, public notice and comment need not be provided for such projects. However, even in such circumstances, the permitting agency should provide advance notice to EPA when it applies this policy to provide an exclusion. For standard-wide applications to groups of sources (e.g., RACT or MACT), the notice may be provided to EPA at the time the permitting authority intends to issue a pollution control exclusion for the class or category of sources and thereafter notice need not be given to EPA on an individual basis for sources within the noticed group.

V. Emission Reduction Credits

In general, certain pollution control projects which have been approved for an exclusion from major NSR may result in emission reductions which can serve as NSR offsets or netting credits. All or part of the emission reductions equal to the difference between the pre-modification actual and post-modification potential emissions for the decreased pollutant may serve as credits provided that 1) the project will not result in a significant collateral increase in actual emissions of any criteria pollutant, 2) the project is still considered environmentally beneficial, and 3) all otherwise applicable criteria for the crediting of such reductions are met (e.g., quantifiable, surplus, permanent, and enforceable). Where an excluded pollution control project results in a significant collateral increase of a criteria pollutant, emissions reduction credits from the pollution control project for the controlled pollutant may still be granted provided, in addition to 2) and 3) above, the actual collateral increase is reduced below the applicable significance level, either through contemporaneous reductions at the source or external offsets. However, neither the exclusion from major NSR nor any credit (full or partial) for emission reductions should be granted by the permitting authority where the type or amount of the emissions increase which would result from the use of such credits would lessen the

environmental benefit associated with the pollution control project to the point where the project would not have initially qualified for an exclusion.

IV. Illustrative Examples

The following examples illustrate some of the guiding principles and safeguards discussed above in reviewing proposed pollution control projects for an exclusion from major NSR.

Example 1

PROJECT DESCRIPTION: A chemical manufacturing facility in an attainment area for all pollutants is proposing to install a RTO to reduce VOC emissions (including emissions of some hazardous pollutants) at the plant by about 3000 tons per year (tpy). The emissions reductions from the RTO are currently voluntary, but may be necessary in the future for title III MACT compliance. Although the RTO has been designed to minimize NO_x emissions, it will produce 200 tpy of new NO_x emissions due to the unique composition of the emissions stream. There is no information about the project to rebut a presumption that the project will not change utilization of the source. Aside from the NO_x increase there are no other environmental impacts known to be associated with the project.

EVALUATION: As a qualifying add-on control device, the project may be considered a pollution control project and may be considered for an exclusion. The permitting agency should: 1) verify that the NO_x increase has been minimized to the extent practicable, 2) confirm (through modeling or other appropriate means) that the actual significant increase in NO_x emissions does not violate the applicable NAAQS,⁷ PSD increment, or adversely impact any Class I area AQRV, and 3) apply all otherwise applicable SIP and minor source permitting requirements, including opportunity for public notice and comment.

Example 2

PROJECT DESCRIPTION: A source proposes to replace an existing coal-fired boiler with a gas-fired turbine as part of a cogeneration project. The new turbine is an exact replacement for the energy needs supplied by the existing boiler and will emit less of each pollutant on an hourly basis than the boiler did.

⁷If the source were located in an area in which nonattainment NSR applied to NO_x emissions increases, 200 tons of NO_x offset credits would be required for the project to be eligible for an exclusion.

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EVALUATION: The replacement of an existing emissions unit with a new unit (albeit more efficient and less polluting) does not qualify for an exclusion as a pollution control project. The company can, however, use any otherwise applicable netting credits from the removal of the existing boiler to seek to net the new unit out of major NSR.

Example 3

PROJECT DESCRIPTION: A source plans to physically renovate and upgrade an existing process line by making certain changes to the existing process, including extensive modifications to emissions units. Following the changes, the source will expand production and manufacture and market a new product line. The project will cause an increase in the economic efficiency of the line. The renovated line will also be less polluting on a per-product basis than the original configuration.

EVALUATION: The change is not eligible for an exclusion as a pollution control project. On balance, the project does not have clearly evident pollution control aspects, and the resultant decrease in the per-product emissions rate (or factor) is incidental to the project. The project is a physical change or change in the method of operation that will increase efficiency and productivity.

Example 4

PROJECT DESCRIPTION: In response to the phaseout of chlorofluorocarbons (CFC) under title VI of the Act, a major source is proposing to substitute a less ozone-depleting substance (e.g., HCFC-141b) for one it currently uses that has a greater ozone depleting potential (e.g., CFC-11). A larger amount of the less-ozone depleting substance will have to be used. No other changes are proposed.

EVALUATION: The project may be considered a pollution control project and may be considered for an exclusion. The permitting agency should verify that 1) actual annual emissions of HCFC-141b after the proposed switch will cause less stratospheric ozone depletion than current annual emissions of CFC-11; 2) the proposed switch will not change utilization patterns or increase emissions of any other pollutant which would impact a NAAQS, PSD increment, or AQRV and will not cause any cross-media harm, including any unacceptable increased risk associated with toxic air pollutants; and 3) apply all otherwise applicable SIP and minor source permitting requirements, including opportunity for public notice and comment.

Example 5

PROJECT DESCRIPTION: An existing landfill proposes to install either flares or energy recovery equipment [i.e., turbines or internal combustion (IC) engines]. The reductions from the project are estimated at over 1000 tpy of VOC and are currently not necessary to meet Act requirements, but may be necessary some time in the future. In case A the project is the replacement of an existing flare or energy system and no increase in NO_x emissions will occur. In case B, the equipment is a first time installation and will result in a 100 tpy increase in NO_x. In case C, the equipment is an addition to existing equipment which will accommodate additional landfill gas (resulting from increased gas generation and/or capture consistent with the current permitted limits for growth at the landfill) and will result in a 50 tpy increase in NO_x.

EVALUATION: Projects A, B, and C may be considered pollution control projects and may be considered for an exclusion; however, in cases B and C, if the landfill is located in an area required to satisfy nonattainment NSR for NO_x emissions, the source would be required to obtain NO_x offsets at a ratio of at least 1:1 for the project to be considered for an exclusion. [NOTE: VOC-NO_x netting and trading for NSR purposes may be discussed in the upcoming NSR rulemaking, but it is beyond the scope of this guidance.] Although neither turbines or IC engines are listed in section III.A.1 as add-on control devices and would normally not be considered pollution control projects, in this specific application they serve the same function as a flare, namely to reduce VOC emissions at the landfill with the added incidental benefit of producing useful energy in the process.¹

The permitting agency should: 1) verify that the NO_x increase has been minimized to the extent practicable; 2) confirm (through modeling or other appropriate means) that the actual significant increase in NO_x emissions will not violate the

¹The production of energy here is incidental to the project and is not a factor in qualifying the project for an exclusion as a pollution control project. In addition, any supplemental or co-firing of non-landfill gas fuels (e.g., natural gas, oil) would disqualify the project from being considered a pollution control project. The fuels would be used to maximize any economic benefit from the project and not for the purpose of pollution control at the landfill. However, the use of an alternative fuel solely as a backup fuel to be used only during brief and infrequent start-up or emergency situations would not necessarily disqualify an energy recovery project from being considered a pollution control project.

applicable NAAQS, PSD increment, or adversely impact any AQRV; and 3) apply all otherwise applicable SIP and minor source and, as noted above, in cases B and C ensures that NO_x offsets are provided in an area in which nonattainment review applies to NO_x emissions increases. permitting requirements, including opportunity for public notice and comment.

RESPONSE TO COMMENTS
PUBLIC HEARING
JULY 29, 1994

45CSR14
PERMITS FOR CONSTRUCTION AND MAJOR
MODIFICATION OF MAJOR STATIONARY SOURCES
OF AIR POLLUTION FOR THE
PREVENTION OF SIGNIFICANT DETERIORATION

No oral comments were received. Four written submissions each containing several comments were received. Three of the written submissions were shorter than the fourth, and the comments contained in all four can, for the most part, be addressed by responding to the more lengthy document. The remainder of the comments will be addressed at the end of the numbered section responses that follow. Therefore, in order to organize this response, this document will follow the numbering system in the more lengthy document filed by the W.Va. Manufacturer's Association and then the remainder of the comments will be addressed at the end of the numbered responses.

1. This section contained a comment that the proposed use of funds derived from the Operating Permit Program authorized under 45CSR30 is contrary to W.Va. Code §22-5-4(a)(17)(E). OAQ responds that 45CSR30, which became effective on April 27, 1994, implements the operating permit program mandated by Title V of the 1990 Clean Air Act Amendments and W.Va. Code §22-5-12. This rule was developed in accordance with USEPA rules in Part 70 of Chapter 40 of the Code of Federal Regulations. Title V of the CAAA and the Part 70 regulations require that the operating permit program be funded solely by fees sufficient to cover all direct and indirect program costs.

Consistent with activities to be covered by Title V fees outlined in the CAAA and Part 70 rules, USEPA issued guidance to states in a memo of August 4, 1993 (see the attached John S. Seitz memorandum) concerning criteria for approval of state fee systems. The EPA guidance emphasizes that EPA approval of state fee programs for adequacy and conformance to CAAA requirements will be largely based upon the particular "design and attributes of each state's air quality management program." On pages 2-9 of the Attachment to the John Seitz memorandum EPA lists activities and costs expected to be covered by Title V permit fees.

In Item K on page 6 of the aforementioned Attachment, EPA lists "implementation and enforcement of preconstruction permits issued to Part 70 (40 CFR Part 70) sources pursuant to Title I of the Clean Air Act" as activities expected to be supported by Title V permit program fees. The EPA memo explicitly lists PSD and NSR (45CSR14 and 45CSR19, respectively) permits issued pursuant to Parts C and D of Title I of the Clean Air Act under these activities.

It is very important to note that all sources subject to PSD

and NSR permitting are major sources which must also be issued permits under 45CSR30 ("Part 70"). 45CSR30, in fact, incorporates "enhanced NSR" provisions which allow an affected company to obtain a PSD/NSR permit and a 45CSR30 permit within one process. Much of the OAQ activity and resources associated with the issuance of a PSD/NSR permit will be directly transferrable to the preparation and issuance of a separate 45CSR30 permit in any case.

45CSR22 establishes a fee for PSD/NSR permit issuance outside of the 45CSR30 annual fee program which the OAQ, however, believes to be an integral part of the overall Title V support system. The PSD/NSR permit fee would be collected partially to support the OAQ activities necessary to issue the PSD/NSR permit to a source which will eventually or concurrently have to obtain a 45CSR30 (Title V) permit but which will not contribute support to the Title V program through annual Title V fees until the source has been constructed and is operating. Accordingly, the OAQ believes that the statements in Item 2 of the Fiscal Notes for 45CSR14 and 45CSR19 require only very minor revision. Specifically, Item 2 of each fiscal note should be rewritten as follows:

"2. Explanation of above estimates. Additional implementation costs above those currently incurred should be minimal as a result of the proposed amendments to this rule. Estimated maximum costs associated with permit issuance is provided in Item 4.A. Funding to implement this rule is provided by permit application fees under current 45CSR22 in conjunction with a small portion of the fees collected under 45CSR30 (implementing Title V of the Clean Air Act). Fee collections and program costs were previously projected and presented in justification for the authorization of 45CSR30."

2. The comment noted that the rule will be clearer if a sentence is added to reference the particular date of the sections that reference federal regulations. OAQ agrees and will add the following sentence at the end of Section 1.5 :

"Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will, for purposes of this rule, be construed as that version which was in effect as of July 1, 1994."

3. The comment was to the effect that incorporating the section containing the determination of stringency in relation to federal counterpart regulations in the rule [Section 1.6] is inappropriate. The comment notes that W.Va. Code §22-1-3a requires the Director of the Division of Environmental Protection to provide a written statement in circumstances in which the Director determines that the rule will be more stringent or less stringent than their federal counterpart. OAQ responds that no reason exists to not include the determination and that as a matter of Division of Environmental Protection policy, that the specific "Determination of Stringency" section be included in each rule

proposed by the individual Offices within the Division. OAQ responds that the section as stated is satisfactory.

4. The comment noted that incorporating the "Constitutional Takings Determination" section in the rule [Section 1.7] is inappropriate. The comment notes that W.Va. Code §22-1A-3(c) (2) expressly exempts the assessment in situations in which the state rulemaking is required pursuant to an applicable federal rule. The comment does not believe the Legislature intended for the determination to be part of the rule itself, thus becoming a law if the rule is authorized. The comment notes that an explanation of the takings determination simply be included as part of the rule filing. OAQ does not disagree with the comment, but notes that no specific reason exists to exclude the determination, and that as a matter of Division of Environmental Protection policy, that the specific "Constitutional Takings Determination" section be included in each rule proposed by the individual Offices within the Division. OAQ responds that the section as stated is satisfactory.

5. The comment notes that by modifying a sentence, Section 2.1 of the rule which defines "Actual Emissions" will more closely mirror the federal section after which it is copied. OAQ agrees and will revise the end of Section 2.1.d. as follows:

"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."

6. This comment contains two parts. The first part notes that, as written, the definition of "Major Modification" in Section 2.27 fails to incorporate the substance of 40 CFR §51.166(b) (2) (iii) (e) (2), after which it is patterned. OAQ does not agree, but does, however, realize some confusion may exist as the term is now worded and will, therefore, copy the counterpart federal regulation into the rule section with limited changes to account for the use of the term "Director."

The second part of this comment recommends modifying the rule to incorporate amendments which will allow for exclusion of pollution control projects for sources other than electric utilities. The amendment would be modeled after a USEPA guidance memorandum dated July 1, 1994, from the USEPA Office of Air Quality Planning and Standards. OAQ must disagree with this suggestion at this time. USEPA has not yet promulgated rules based upon this memorandum. The memorandum remains a guidance document. If OAQ incorporates the memorandum into this rule and USEPA fails to promulgate the basis of the rule or promulgates the rule with modifications, OAQ's rule will, therefore, be inconsistent with the USEPA's rules and will be either more stringent or less stringent, than the counterpart federal regulation and require additional modification to bring the state rule into alignment with the federal counterpart regulation.

7. The comment notes that the definition of "Major Source Baseline Date" omits the substance of the corresponding federal regulation found at 40 CFR §51.166(b) (14) (iii). OAQ agrees

and will amend Section 2.29 of the rule by consolidating the terms "major source baseline date" and "minor source baseline date" to exactly conform to 40 CFR §51.166(b)(14).

8. The comment concerns the requirement for a permit applicant to petition the Director to be allowed to exclude fugitive emissions from some source categories in the determination of potential to emit which would affect the applicability of this rule to such sources. OAQ has reviewed this matter and has modified the language at Subsection 15.2 to allow exclusion of fugitive emissions in accordance with the federal regulations without petition. A related comment is also contained and addressed in Item 21 of this document.

9. The comment notes that the proposed definition of "Minor Source Baseline Date" needs to be revised in order to be consistent with the corresponding federal counterpart regulation found at 40 CFR §51.166(b)(14) and its subparts. OAQ agrees, and in response, will rewrite the definition by consolidating the terms "minor source baseline date" and "major source baseline date" to exactly conform to 40 CFR §51.166(b)(14).

10. The comment notes that revisions to the definition of "PM10" are required to conform this definition to its counterpart federal regulation found at 40 CFR §51.100(qq). OAQ agrees and will revise Section 2.35 as follows:

(1) the phrase "described in" should be deleted and replaced with "based on"; and

(2) the phrase "and designated in accordance with 40 CFR 53 or by an equivalent method designated in accordance with 40 CFR 53" should be inserted at the end of the definition.

11. The comment noted that revisions to the definition of "particulate matter" are needed to conform the proposed definition with the corresponding federal regulation found at 40 CFR §51.100(oo). OAQ carefully reviewed this comment and the use of the term "particulate" and "particulate matter" throughout the proposed rule. OAQ believes that the appropriate approach in addressing this comment is to incorporate the definition of "particulate matter emissions" from 40 CFR §51.100(pp). In order to clarify that all references to "particulate" and "particulate matter" in this rule means "particulate matter emissions," OAQ has included the following definition for "particulate matter emissions" in lieu of the prior definition for "particulate matter" in Section 2.36 as follows:

"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, or by a test method specified in any rule of the Director which has been incorporated as part of the federally approved State Implementation Plan. All references to particulate and particulate matter in this rule shall mean particulate matter emissions."

12. The comment notes that proposed subsection 2.44.a.

is adapted from the federal counterpart regulation found at 40 CFR §51.166(b) (32) (i) and as worded, may limit the applicability of the provision to filings with the State or Federal air pollution control authorities and therefore, be more stringent than federal regulation. OAQ agrees and will amend Section 2.44.a. as follows:

The phrase "filings with the Director or USEPA" be replaced with the phrase "filings with the State or Federal regulatory authorities."

13. The comment is in two parts and the first notes that revisions are required to conform the definition of "significant" in Section 2.46 with the counterpart federal regulation found at 40 CFR §51.166(b) (23). OAQ agrees and will amend Section 2.46 as follows:

(1) the phrase "Notwithstanding Subsection 2.46.a" will be added at the beginning of Subsection 2.46.c.; and

(2) the phrase "or any net emissions increase" should be inserted before the word "associated" in Subsection 2.46.c.

The second part of the comment notes that the rule fails to delete certain pollutants, specifically asbestos, beryllium, mercury, and vinyl chloride - all of which are listed in the Clean Air Act Amendments §112(b) (1). Doing so is necessary in order to be consistent with CAAA §112(b) (6) which provides that "[t]he provisions of Part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section." OAQ believes that the provisions found at §112(b) (6) of the CAAA represent an unfortunate decision by the Congress of the United States in the regulation of hazardous air pollutants. However, in response to the comment, and in the absence of a specific finding supporting their retention and thus being more stringent than the counterpart federal regulation, the OAQ has deleted the four hazardous air pollutants specifically listed in Section 2.6.a.

14. The comment notes that the term "significant impact" does not appear relevant to any of the determinations required under this rule, and the term is not defined in the federal counterpart regulations found at 40 CFR §51.166, and therefore, the comment recommends deleting the term from this rule. OAQ realizes the term is not defined in the counterpart federal PSD regulations, but notes that significance levels under the term are incorporated into federal NSR rules (40 CFR §165) and is used in both 45CSR14 and 45CSR19 (where the term is more directly applicable), because the term "significant impact" has important meaning and is closely linked to the implementation of both 45CSR14 and 45CSR19 as the rule applies to major sources. After reviewing the WVMA comment, OAQ declines to remove the term from this rule, but has added Section 8.2 to clarify how the "significant impact" criteria are applied in determining whether a source causes or contributes to air pollution in violation of national and state air quality standards.

15. The comment notes two wording changes to make the rule easier to read and to correspond with the federal counterpart

regulation found at 40 CFR §51.166(c). OAQ agrees with the first change, but not the second, and will amend the first section, Section 14.3, as follows:

revise the heading of the Section to read:

"Ambient Air Quality Increments and Ceilings."

OAQ disagrees with the second recommended change to insert the phrase "[I]n areas designated as Class I, II, or III," at the beginning of Subsection 3.1, and will not revise the subsection. W.Va. contains no Class III areas, and OAQ believes the rule to be sufficiently clear as it now reads.

16. The comment recommended the following two wording revisions to add clarity to the rule. After reviewing 40 CFR §51.166(h), OAQ agrees, and will amend Section 14-5 of the rule as follows:

(1) the word "existed" will be inserted immediately before the word "or" in Subsection 5.1; and

(2) the word "existed" which appears immediately before the phrase "before December 31, 1970" will be deleted and replaced with the phrase "was implemented."

17. The comment consists of two parts. The first part of the comment regards concerns in relation to the list of requirements which would have to be submitted in a permit application under Subsection 6.2 of this rule. OAQ does not believe that the section should be changed since all the prescribed permit application information is listed in counterpart federal rules, would be required in most applications submitted under this rule (with the possible exception of Section 6.2.e.) and since the rule states that the listed information in Subsection 6.2 "may" not "shall" be required. OAQ would attempt in any case to describe information which must be included or excluded from a particular application via a pre-application conference.

The second part of the comment for this section apparently seeks to substitute the term "begin actual construction" for the term "commencement of construction" contained in 45CSR14. OAQ, however, believes the suggested change is acceptable since it would conform to the counterpart federal regulation. Accordingly, the term "begin actual construction" will be added to the definition section closely following the federal counterpart regulation and will be substituted for the phrase "commencement of construction" in Subsection 6.1.

18. This comment consisted of three parts. The first part of the comment notes that the phrase "each applicable emissions limitation promulgated by the Director and any other federally enforceable emissions limitations" which appears at the end of Subsection 7.1 does not equate with "each applicable limitation under the SIP and each applicable emission standard and standard of performance under 40 CFR Parts 60 and 61" found in the federal counterpart regulation at 40 CFR §51.166(j)(1). OAQ disagrees, in part, and agrees, in part, with the suggested change.

OAQ believes that Section 7.1 must state the requirements that any stationary source or modification "shall meet each applicable emission limitation promulgated by the Director", but

agrees with the comment that the phrase "any other federally enforceable emission limitation" may be overly broad and does not conform to the counterpart federal regulation. Accordingly, OAQ has rewritten Subsection 7.1 as follow:

"Any person proposing to construct, or relocate a major stationary source or a major modification shall meet each applicable emission limitation promulgated by the Director and each applicable emission standard and standard of performance under 40 CFR Parts 60, 61 and 63."

The second part of this comment recommends that the word "new" be inserted immediately before the phrase "major stationary source" in proposed Subsection 7.2 in order to conform to the corresponding federal regulation found at 40 CFR §51.166(j)(2). OAQ agrees and will revise the subsection accordingly.

The third part of this comment notes that the phrase "or relocate" which appears in proposed Subsections 7.1 and 7.2 and the phrase "or relocation" which appears in proposed Subsection 7.4 do not appear in the corresponding federal regulation found at 40 CFR §51.166(j)(1), (2), and (4), and the inclusion of those phrases make the state rule more stringent than the federal counterpart. OAQ agrees in part, and disagrees in part. OAQ believes that Section 7.1 applies to any source, and whether or not the source relocates, constructs or reconstructs is irrelevant, and therefore, OAQ believes that no stringency considerations are triggered by the phrase and conceives of no reason to remove the phrase "or relocate" from Section 7.1. OAQ agrees with the comment insofar as Section 7.2 and 7.4 are concerned, and will, therefore, revise the two sections accordingly.

19. The comment is in three parts, the first of which notes that Subsection 12.2 be revised to conform to the corresponding federal counterpart regulation found at 40 CFR §51.166(p)(3). OAQ agrees and has amended Subsection 12.2 by inserting the phrase "Federal mandatory" immediately after the phrase "values (including visibility) of any."

The second part of the comment recommends replacing in Subsection 12.3 the references to 40 CFR 52.21 with 40 CFR 51.166. Part 52 consists of EPA's own rules which apply to federally administered programs and the recommended cite is the correct citation. OAQ agrees and has amended the rule subsection accordingly.

The third part of the comment notes that Subsection 12.3 should be revised to incorporate the provision for Class I variances found in 40 CFR §51.166(p)(4). OAQ agrees and will amend the rule accordingly.

20. The comment is in two parts, the first of which notes that the word "employ" in Section 13.1 should be deleted and replaced with the phrase "approve a system of." OAQ agrees and will amend the rule accordingly.

The second part of the comment, notes that the reference to 40 CFR 52 in Subsection 13.1.e. should be replaced with 40 CFR §51.166. See 40 CFR §51.166(s)(vi) and the comment in item number 19 of this document.

21. With respect to the comment questioning the entire petitioning process set forth in Section 15, OAQ has extensively reviewed this matter, and has reconstructed the language in this section and has retitled the section "Exemptions From Specific Requirements Of This Rule."

In subsections 15.1 and 15.3, referencing potential exemptions from the requirements of sections 7 through 11 of the rule, OAQ has deleted the reference to sections 7 through 11 and has replaced this with a reference to "Sections 7.2, 7.3, 7.4, 8, 10, and 11." In reviewing the WVMA comment, and analyzing Section 7 and Section 15, it became apparent that there could be no basis for exempting any source from the requirement at Section 7.1 to meet each applicable emission limitation promulgated by the Director and any other standard of performance (enforceable by the Director) under 40 CFR Part 60, Part 61 or Part 63.

The petitioning process at Subsection 15.1 relating to the potential exemption of non-profit health or non-profit education institutions from the requirements of this rule has been retained. A review of federal regulations at 40 CFR §52.21 and 40 CFR §51.166 demonstrates that such an exemption was intended to be a discretionary decision on the part of the state.

Subsection 15.2 was changed to eliminate the requirement for petition to the Director as noted for comment numbered 8.

Subsections 15.3, 15.4, and 15.5 retain the requirement to petition the Director because the criteria for exemption are based upon confirmation of certain factual information which is frequently found to be incorrect or require an interchange of information between an affected source and the OAQ.

Subsection 15.6 in both the current rule and the counterpart federal provisions require specific demonstrations to be made to the Director which could only be accomplished through a petitioning or similar process. Also, OAQ finds that the reference to Subsection 10.5 in 15.6 is too narrow and should provide for exemption from all of Section 10. Accordingly, the reference in Subsection 15.6 to Subsection 10.5 will be deleted and replaced with "Section 10."

The provisions within Subsection 15.7 relate to a process where a person proposing to construct a major stationary source or a major modification must submit a complete application under this rule and such application could not be deemed complete without agreement by the Director to accept post-approval monitoring data in lieu of pre-construction monitoring data which would normally be required upon submission of the application. The petition process is accordingly retained. In reviewing the language of the counterpart federal regulations, the provisions in paragraph "b" are not found, and OAQ has, accordingly, deleted paragraph "b." To eliminate the uncertainty feared by the comment with respect to the Director's decision making for petitions under this subsection, the subsection will now provide that the Director "shall" not "may" grant such an exemption if the condition for exemption is met.

With respect to the comment suggesting adding the provision in counterpart federal regulations concerning

requirements for ambient ozone monitoring to the bottom of Table 3, OAQ has reviewed the current language in Subsection 15.8 and determined that the suggestion contained in the comment could be better accommodated by deleting subsection 15.8 and adding a new paragraph "d" to subsection 15.6" to read as follows:

"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."

In this extensive comment, WVMA also suggested that the discretionary exemptions provided for in 40 CFR §51.166(i)(5), (11), and (12), be considered for inclusion in 45CSR14. In OAQ's review of this comment, OAQ believes that adding an additional sentence to Subsection 6.1 is the best approach to addressing the inclusion of 40 CFR §51.166(i)(5). OAQ believes that a comparable provision to 40 CFR §51.166(i)(11) is unnecessary, but has included a similar provision to that provided at 40 CFR §51.166(i)(12) as a new Subsection 15.8.

The WVMA comment concerning OAQ's use of the term "relocation" in Sections 7 and 15 was considered at length. The WVMA comment specifically questioned whether subjecting relocation of major stationary sources to the provisions of this rule is in accord with federal PSD regulations. A careful review of the federal and state regulations and consultation with USEPA personnel confirms that the PSD requirements, or at least certain elements of the pre-construction requirements, must be met via the permitting process where major sources may be disassembled and reassembled in a different geographical location which may have different air quality characteristics. OAQ believes that USEPA intended that the term "construction" would apply to such movement of major sources, but believes that the term "relocation" more clearly communicates the requirements of the PSD regulations for portable sources or other major sources which might be moved. The language incorporated into federal PSD rules at 40 CFR §51.166(i)(4)(iii), 40 CFR §51.166(i)(6), 40 CFR §52.21(i)(4)(viii) and 40 CFR §52.21(i)(6) concern possible exclusions of portable and temporary major sources and major modifications from the new source review requirements of the PSD rules. 40 CFR §51.166(i)(4)(iii) and 40 CFR §52.21(i)(4)(viii) particularly provide for the exemption of portable sources which have "previously received a permit under this section" to be exempted from the pre-construction requirements of the PSD rules if certain conditions are demonstrated. These conditions are: (1) a confirmation that emissions from the source at the new location will be temporary; (2) the emissions from the source will not exceed allowable emissions under the existing permit; and (3) the emissions from the source will impact no Class I area and no area where an applicable air quality increment is known to be violated. It should be very clear that the exemption provisions such as those described above would be unnecessary in the PSD rules if all source relocations were exempted from the rules. OAQ has, therefore, concluded that the use of the terms "relocations" and "relocate" in most sections of 45CSR14 is not inconsistent with the federal PSD regulations and should be

retained in all sections of the rule except Subsections 7.2 and 7.4. which require application of best available control technology ("BACT").

The last issue raised by WVMA in comment 21 again related to the list of sources which must include fugitive emissions in the calculation of potential to emit. WVMA questioned the last item in the list of source categories in Table 2, specifically with respect to reference to any source categories related to Section 110 of the CAAA. OAQ concurs with the comment and has, accordingly, changed the referenced sections to the CAAA §111 and §112, rather than §110 and §111. In its review of the WVMA comments 8 and 21, OAQ discovered that USEPA's incomplete rulemaking with respect to federal PSD/NSR requirements in conjunction with USEPA's prior comments to the agency concerning mandatory revisions to the State's PSD/NSR rules created some confusion concerning how Table 2 in 45CSR14 should be constructed. OAQ determined that the most valid and up-to-date federal counterpart provision is found in USEPA's 40 CFR Part 70 regulations now reflected in 45CSR30 and has incorporated the language from the 45CSR30 table into Subsection 15.2.

22. The comment notes that in order to conform to the corresponding federal regulation found at 40 CFR §51.166(q) for the time for carrying out a preliminary determination as to whether a permit should be approved, approved with conditions, or disapproved, that the phrase "Within one year after receipt of a complete application" be inserted at the beginning of Section 16.1. Section 6.5 currently provides that within six months of receipt of a completed application, the Director will issue a permit. Therefore, OAQ disagrees with the proposed revision and will not amend the rule section.

RESPONSE TO OTHER COMMENTS NOT INCLUDED ABOVE

Two comments suggest that a six month period is too long for issuance of permits under 45CSR14 (PSD) and one comment noted the same comment for 45CSR19 (NSR). OAQ has processed only two or three permit applications pursuant to 45CSR19 and perhaps twenty permit under the PSD program of 45CSR14.

Under the best of circumstances to date permitting of a new facility under 45CSR14 could only be accomplished within a five month time-frame with most permit reviews actually taking longer than six months from first application submittal. Although OAQ agrees that PSD permit processing should be expedited to the extent possible, experience has shown that the preparation of PSD/NSR permit applications and subsequent agency review is a very complex process that is difficult to accomplish even within a six month period. Most PSD/NSR applications that OAQ has received to date, even after being found to be administratively complete, tend to contain significant errors, need substantial clarifications, or are substantially deficient in the area of BACT analyses and documentation and air quality and other impact analyses. Even after all apparent corrections and data gaps in applications are addressed, the PSD review process requires at least a two month time period to carry out the mandated public notice and public comment/hearing process and to provide that all comments from EPA, Federal Land Managers, and the public receive adequate response. OAQ believes that a one year time-frame for some PSD applications as provided for EPA review under EPA's rules is more appropriate than a six month period and strongly disagrees with the comments that a six month time-frame is too long.

Additional comments received in the written submission and not included in the above numbered response include the following:

One comment was directed to the definition of "air pollution" in Section 2.4. The comment suggests including a reference to "the act of a person" as "person" is defined in several other OAQ regulations. OAQ responds that Section 2.4 mirrors the definition of "statutory air pollution" found at W.Va. Code §22-5-2(6), and therefore, will not revise the definition.



DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

DAVID C. CALLAGHAN
DIRECTOR

July 28, 1994

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

RE: CSR-45-14 - Permits for Construction & Major
Modification of Major Stationary Sources of
Air Pollution for the Prevention of Significant
Deterioration

Dear Ms. Cooper:

This is to advise you that I am giving approval for the
filing of the above-captioned rule with your Office and the
Legislative Rule-Making Review Committee as an agency-approved
rule.

Your cooperation in this regard is very much appreciated.
If you have any questions or require additional information,
please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. Callaghan", written over the typed name.

David C. Callaghan
Commissioner
Bureau of Environment

DCC;RTH:cc

Attachment