

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE 1992 Aug 31  
ADMINISTRATIVE LAW DIVISION

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

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45CSR14

CITE AUTHORITY WV Code §16-20-5

AMENDMENT TO AN EXISTING RULE: YES  NO


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

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

  
G. Dale Farley  
Secretary  
WV Air Pollution Control Commission

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:  West Virginia Air Pollution Control Commission

Address:  1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	\$ *	\$ *	\$ *	\$ *	\$ *
Personal Services	*	*	*	*	*
Current Expense					
Repairs and Alterations					
Equipment					
Other					

\*Cost for Permitting activities under this rule can range from \$0 - \$150,000 depending upon number of applications received.

2. Explanation of above estimates:

See Attached page.\*

3. Objectives of these rules:

See Attached page.\*

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

See attached page.

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

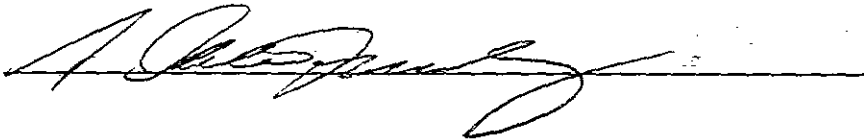
See attached page.

C. Economic impact on citizens/public at large.

See attached page.

Date: August 31, 1992

Signature of agency head or authorized representative:

A handwritten signature in cursive script is written over a horizontal line. The signature is somewhat stylized and difficult to read, but appears to be a name starting with 'A'.

## Regulation 14 - Fiscal Note

### 2. Explanation of above estimates:

Most major source permitting activity to date has resulted from the applicability of Regulation 14 to proposed new facilities in areas of the state that are attaining the National Ambient Air Quality Standards (NAAQS) or are unclassifiable. At the 3 man-year level associated with review of the maximum number of Regulation 14 permits processed to date, costs for this activity would be approximately \$40,000 per engineer plus training and transportation expenses (approximately 150,000). No significant additional costs or workload, however, are anticipated as a result of the proposed revisions to this regulation.

### 3. Objectives of these rules:

To bring the state's air quality rules for preconstruction review of major sources and major facility modifications into conformance with federal provisions enacted prior to the 1990 Clean Air Act Amendments and into conformance with substantial new provisions in the revised federal Clean Air Act.

#### 4.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 under Regulation 14 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.

#### 4.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.

#### 4.C. Economic Impact on Citizens/Public at Large.

Proposed rule revisions will have minimal impact.

DATE: August 31, 1992  
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 WV Code §16-20-5
  
2. a. Date filed in State Register with Notice of Hearing:  
May 8, 1992
  
- b. What other notice, including advertising, did you give of the hearing?  
Class II legal advertisement filed in ... published in each of  
the Air Quality ...
  
- c. Date of hearing \_\_\_\_\_
  
- d. Attach list of pe- \_\_\_\_\_  
amendments, rea- \_\_\_\_\_  
Attached X \_\_\_\_\_  
\_\_\_\_\_
  
- e. Date you filed in \_\_\_\_\_  
Legislative Rule for \_\_\_\_\_ ed proposed
  
- f. Name and phone number of agency person to contact for additional information:  
G. Dale Farley, Chief  
Office of Air Quality (Phone: 558-2275)

*Comment*

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 \_\_\_\_\_

*West  
Virginia*



DEPARTMENT OF COMMERCE,  
LABOR & ENVIRONMENTAL RESOURCES  
OFFICE OF THE SECRETARY

State Capitol

Charleston, West Virginia 25305

304/348-3255

April 27, 1992

G. Dale Farley, Director  
1558 Washington Street, E.  
Charleston, West Virginia 25305

**RE: Air Pollution Control Commission - Procedural Rules,  
Title 45, Series 14**

Dear Dale:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

*John M. Ranson*  
John M. Ranson  
Cabinet Secretary

JMR:cjb

B:RUL-APC3.CJB



West Virginia Department of  
Commerce, Labor & Environmental Resources  
Air Pollution Control Commission

1558 Washington Street, East  
Charleston, West Virginia 25311

Telephone: (304)348-4022  
or (304)348-3286  
Fax: (304)348-3287

May 8, 1992

Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25303

RE: Proposed 45CSR14  
File: July 15, 1991

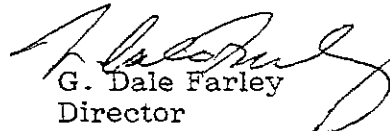
Dear Ms. Cooper:

The undersigned on behalf of the Air Pollution Control Commission requests the withdrawal of proposed 45CSR14 as filed on July 15, 1991.

Please note that contemporaneous with the withdrawal of proposed 45CSR14, the Air Pollution Control Commission is filing another version of proposed 45CSR14.

If you have any questions or comments, please contact me at 348-2275.

Sincerely yours,

  
G. Dale Farley  
Director

GDF/tlm

FILED  
1992 MAY -8 PM 12:50  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #1

Do Not Mark In this Box

FILED  
1992 MAY -8 PM 12:50  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45CSR14  
RULE TYPE: Legislative; CITE AUTHORITY Chapter 16, Article 20, Section 5  
AMENDMENT TO AN EXISTING RULE: YES  NO   
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR14

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: June 23, 1992 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Conference Room

WV Air Pollution Control Commission

1558 Washington Street, East

Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as Above.

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

  
G. Dale Farley, Director

## 45CSR14

### SUMMARY

45CSR14 was promulgated by the Commission on May 15, 1984 and became effective on June 14, 1984. The purpose of this regulation 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. This regulation has been revised primarily as a result of USEPA's promulgation of nitrogen oxide increments and changes to the definitions of the terms "federally enforceable" and "volatile organic compounds", and other minor changes in language and definitions to better conform to the federal PSD regulations, and the 1990 Clean Air Act Amendments. Also, the time frame for permit review has been extended from ninety (90) days to twelve (12) months, based on recent changes to Chapter 16, Article 20 which eliminated the previous ninety (90) day statutory permit review period.



Ken Hechler  
Secretary of State

# WEST VIRGINIA REGISTER

Volume IX

Issue 20

May 15, 1992

Pages 970-1008

A Weekly Publication

Administrative Law Division

Judy Cooper  
Director

Missy Phalen  
Administrative Assistant

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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- VI. Legislative Interims
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- XI. Other Documents or Information Filed
- XII. Publication Deadlines and Publication Dates



West Virginia Department of  
Commerce, Labor & Environmental Resources  
Air Pollution Control Commission

1558 Washington Street, East  
Charleston, West Virginia 25311

Telephone: (904)348-4024  
or (904)348-1346  
Fax: (904)348-3287

May 8, 1992

Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25303

RE: Proposed 45CSR14  
File: July 15, 1991

Dear Ms. Cooper:

The undersigned on behalf of the Air Pollution Control Commission requests  
the withdrawal of proposed 45CSR14 as filed on July 15, 1991.

Please note that contemporaneous with the withdrawal of proposed 45CSR14,  
the Air Pollution Control Commission is filing another version of proposed 45CSR14.

If you have any questions or comments, please contact me at 348-2275.

Sincerely yours,

*G. Dale Farley*  
G. Dale Farley  
Director

GDF/tlm

FILED  
1992 MAY - 8 PM 12:50  
REC'D: 11 11 1992  
SECRETARY OF STATE

SECRETARY OF STATE  
MEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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WV Air Pollution Control Commission  
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Charleston, West Virginia 25311

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

*[Handwritten signature]*



West Virginia Department of  
Commerce, Labor & Environmental Resources  
Air Pollution Control Commission

1558 Washington Street, East  
Charleston, West Virginia 25311

Telephone: (304)348-4022  
or (304)348-3286  
Fax: (304)348-3287

AGENDA

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION  
Conference Room  
1558 Washington Street, East  
Charleston, West Virginia 25311

June 23, 1992  
9:00 a.m.

I. HEARINGS ON PROPOSED AMENDMENTS (REVISIONS) TO REGULATIONS

1. Hearing on Proposed Amendments (Revisions) to Regulation 14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution For the Prevention of Significant Deterioration".
2. Hearing on Proposed Amendments (Revisions) Regulation 19 - "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".
3. Hearing on Proposed Regulation 29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

II. HEARINGS ON PROPOSED CONSENT ORDERS (COMPLIANCE PLANS) UNDER WVAPCC REGULATION 27 (45CSR27)

1. Koppers Industries, Inc. - Follansbee
2. G. E. Chemicals, Inc. - Washington
3. E. I. DuPont de Nemours & Company, Inc. - Washington Works
4. Union Carbide Corporation - South Charleston

III. COMMISSION MEETING

1. Further Consideration of Proposed Amendments to Regulation 5 - "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal handling Operations".
2. Director's Report.
3. Such other business as the Commission deems timely and appropriate.



West Virginia Department of  
Commerce, Labor & Environmental Resources  
Air Pollution Control Commission

1558 Washington Street, East  
Charleston, West Virginia 25311

Telephone: (304)348-4022  
or (304)348-3286  
Fax: (304)348-3287

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

Upon authorization and promulgation, these legislative rules will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the  
17.

If you have any questions or comments please contact:

G. Dale Farley  
Secretary  
West Virginia Air Pollution Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311

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mony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Cabell County Public Library, 455 9th Street Plaza, Huntington, WV.

If you have any questions or comments please contact:

G. Dale Farley  
Secretary  
West Virginia Air  
Pollution Control  
Commission  
1558 Washington  
Street, East  
Charleston,  
West Virginia 25311

LH-665 5-13-20,92

## AFFIDAVIT OF PUBLICATION

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

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 newspaper, 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-665 was duly published in

The Herald-Dispatch

one time, once a week for 2 successive weeks, commencing with its issue of the 13th day of May, 19 92, and ending with the issue of the 20th day of May, 19 92, and was posted at the East Door of the Cabell Co. Courthouse

on the 20th day of May, 1992: that said legal advertisement was published on the following dates: May 13, 20 1992

\$65.37; that the cost of publishing said annexed advertisement as aforesaid was \$65.37; 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 newspaper 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 Huntington, Cabell and Wayne Counties, West Virginia, and

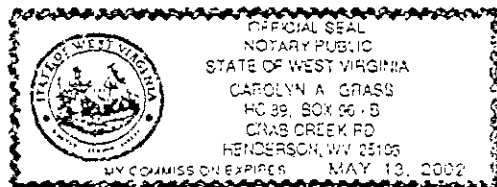
that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial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

Connie Rappold

Taken, subscribed and sworn to before me in my said county this 20th day of May, 19 92

My commission expires May 13, 2002  
Carolyn A. Grass

Notary Public  
Cabell County,  
West Virginia



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

March 21, 19 92

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 two  
successive week (Class II), commencing with the issue of the  
13th day of May, 1992, and ending with the issue  
of the 20th day of May, 1992, (and was posted at the

on the \_\_\_\_\_ day of \_\_\_\_\_); that said annexed  
notice was published on the following dates: 5/13, 5/20

\_\_\_\_\_ and that the  
cost of publishing said annexed notice as aforesaid was \$ 29.28

Signed [Signature]  
Robert E. Zutaut, Advertising Manager  
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this  
21st day of May, 19 92

My commission expires March 27, 2001  
[Signature]  
Notary Public of Raleigh County,  
West Virginia

R/H

**COPY OF PUBLICATION**

NOTICE OF PUBLIC HEARING  
On Tuesday, June 23, 1992  
beginning at 9:00 a.m., the West  
Virginia Air Pollution Control  
Commission will hold a public  
hearing on proposed legislative  
rules 45CSR14 - "Permits for  
Construction and Major  
Modification of Major Stationary  
Sources of Air Pollution for the  
prevention of Significant  
Deterioration", 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", and 45CSR29 -  
"Regulation Requiring the  
Submission of Emission  
Statements for Volatile Organic  
Compound Emissions and  
Oxides of Nitrogen Emissions".  
Upon authorization and  
promulgation, these legislative  
rules will be submitted to the U.  
S. Environmental Protection  
Agency for incorporation into the  
West Virginia Implementation  
Plan under the federal Clean Air  
Act.

The hearing will be held in the  
Commission's Conference Room  
at 1558 Washington Street East,  
Charleston, West Virginia. The  
hearing is open to the public.  
Written and oral testimony by all  
interested parties will be  
accepted and made part of the  
record.

Copies of the proposed  
legislative rule are available for  
public review in the Raleigh  
County Public Library, P. O. Box  
1876, Beckley, WV.

If you have any questions or  
comments please contact:  
G. Dale Farley  
Secretary  
West Virginia Air Pollution  
Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311  
5-21-Thu-2-RH

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Kelley Young OF

THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,  
PUBLISHED IN THE CITY OF CHARLESTON, KANAWHA COUNTY,  
WEST VIRGINIA, DO SOLEMNLY SWEAR THAT THE ANNEXED

NOTICE OF: PUBLIC HEARING  
WAS DULY PUBLISHED IN SAID PAPER(S) ON THE DATES  
LISTED BELOW, AND WAS POSTED AT THE FRONT DOOR OF THE  
COURT HOUSE OF SAID KANAWHA COUNTY, WEST VIRGINIA,  
ON THE

13TH DAY OF MAY , 1992 .

DATES PUBLISHED:

05/12/92 DAILY MAIL 05/19/92 DAILY MAIL

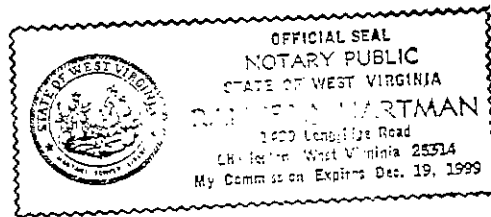
SUBSCRIBED AND SWORN TO BEFORE ME THIS

20TH DAY OF MAY , 1992 .

Marcus A. Hartman

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE \$ 46.81



NOTICE OF PUBLIC HEARING

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The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Library of the West Virginia Air Pollution Control Commission located at the address below.

If you have any questions or comments please contact:

G. Dale Farley  
Secretary  
West Virginia Air Pollution Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311  
(900218)

PUBLISHER'S CERTIFICATE

VS.

STATE OF WEST VIRGINIA,  
COUNTY OF HARRISON

I, 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 once a week for 2 successive weeks,

commencing on the 12th day of May 19 92

and ending on the 19th day of May 19 92

The publisher's fee for said publication is \$ 19.60

Given under my hand this 19th day of May 19 92

Deborah S. Veltri  
Classified Office Mgr. of The Clarksburg Exponent

SEAL

Subscribed and sworn to before me this 19th day

of May 19 92

[Signature]  
Notary Public in and for Harrison County, WV.

My commission expires on the 24th day of October 1993.

NOTICE OF PUBLIC HEARING  
On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".  
Upon authorization and promulgation, these legislative rules will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.  
The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.  
Copies of the proposed legislative rule are available for public review in the office of the West Virginia Air Pollution Control Commission, North Central Regional Office, 517 1/2 East Park Avenue, Fairmont, WV.  
If you have any questions or comments please contact:  
G. Dale Farley  
Secretary  
West Virginia  
Air Pollution Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311

State of West Virginia, County of Randolph, ss.

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 — "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration," 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," and 45CSR29 — "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions."

Upon authorization and promulgation, these legislative rules will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV.

If you have any questions or comments please contact:

G. Dale Farley  
Secretary  
West Virginia Air  
Pollution Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311

5-11, 18

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:

May 11 May 18

19 92 as required by law.

Given under my hand this 18 day of May 19 92

James Hoffman  
Publisher

Printer's Fee: \$ 35.25

me this 18 day of May 19 92

Notary Public

My Commission Expires the 24 day of April 19 94

**NOTICE OF PUBLIC HEARING**  
 On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14-"Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29-"Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

Upon authorization and promulgation, these legislative rules will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV.

If you have any questions or comments please contact:

G. Dale Farley  
 Secretary  
 West Virginia Air Pollution  
 Control Commission  
 1558 Washington Street, East  
 Charleston, West Virginia  
 5:14,21(2t)

OFFICIAL SEAL  
 NOTARY PUBLIC  
 STATE OF WEST VIRGINIA  
 REBECCA MASON WHITE  
 RT. 2  
 HEDGESVILLE, WV 25427  
 My Commission Expires June 28, 1993

*Rebecca Mason White*

## Certificate of Publication

This is to certify the annexed advertisement

WV DEPT. COMMERCE, LABOR &  
 ENVIRONMENTAL RESOURCES

### NOTICE OF PUBLIC HEARING

appeared for 2 consecutive <sup>days</sup> weeks  
 in The Journal Publishing Company a  
 newspaper published in the City of  
 Martinsburg, W. Va., in its issue  
 beginning

5/14

and ending

5/21

The Journal

*James K. McKinney*

Fee \$ 34.27

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

RECEIVED

22 MAY 21 AM 11:00

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

WV Air  
Pollution Control Comm.

in the case of Public  
Hearing: Permits for  
construction and modification

vs. \_\_\_\_\_

a copy whereof is hereto annexed has been published for 2 consecutive weeks

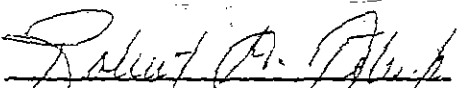
in said NEWS-TRIBUNE, the first publication being on the 13th day of May

19 92

Given under my hand at Keyser this 20th

day of May

19 92

  
Publisher

Publisher's Fee

\$ 31.23

**NOTICE OF PUBLIC HEARING**

On Tuesday, June 23, 1992, beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

Upon authorization and promulgation, these legislative rules will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

If you have any questions or comments please contact:

G. Dale Farley

Secretary

West Virginia Air Pollution Control Commission

1558 Washington Street, East

Charleston, West Virginia 25311

5-13-92

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

Upon authorization and promulgation, these legislative rules will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

If you have any questions or comments please contact:  
G. Dale Farley  
Secretary  
West Virginia Air Pollution Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311

May 14, 21

MARCIA MOORE

being first duly sworn, says that the

notice of public hearing-- June 23rd

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 two

successive weeks, the first publication and posting thereon being on the 14th day of MAY 1992 and subsequent publication on the 21st day of MAY 1992, the        day of        19      , the        day of        19      , and the        day of        19      .

Printer's Fee \$ 33.80 3 " x 103 = 309 words @ 10.9375

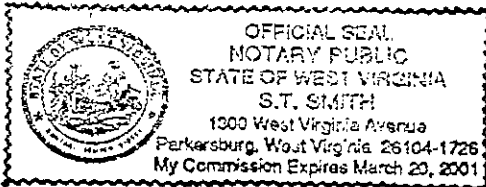
*Marcia Moore*

Subscribed and sworn to before me this 21st day of MAY 1992.

*S. J. Smith*

Notary Public for Wood County, West Virginia

My commission expires MARCH 20, 2001



NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR 14-"Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 45CSR19-"Requirements for Pre-construction Review, Determination of Emission Trading Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants", and 45CSR29-"Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

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The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. Copies to the proposed legislative rule are available for public review in the office of the WV Air Pollution Control Commission, Northern Panhandle Regional Office, 1911 Warwood Avenue, Wheeling, WV.

If you have any questions or comments please contact:  
G. Dale Farley  
Secretary  
West Virginia  
Air Pollution Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311  
Tel. May 14, 21  
WV-Reg., May 14, 21

STATE OF WEST VIRGINIA,  
COUNTY OF OHIO.

I, Bonnie Mattern for the publisher of the

~~WHEELING NEWS REGISTER~~  
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:

May 14, 21, 1992

commencing on the 14 day of May, 1992

Given under my hand this 26 day of May, 1992

Bonnie Mattern

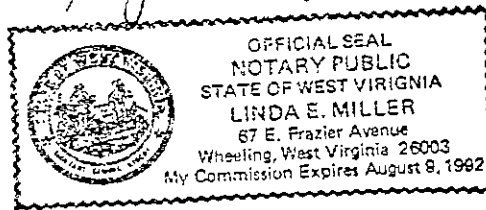
Sworn to and subscribed before me this 26th day of May 1992 at WHEELING, OHIO COUNTY, WEST VIRGINIA

Linda E. Miller

Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires August 9, 1992



# State of West Virginia, County of Upshur, ss:

.... Douglas M. Leifheit..... 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 .. (2) .. two .. successive weeks in  
said Record Delta newspaper published as aforesaid, commencing on the ..  
13th and 20th days of May .. days of 19.. 92

Given under my hand this 27th day of May day of 19.. 92

..... *Douglas M. Leifheit* ..... Advertising Manager

15.14

Printers fee \$ .....

### WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 29th day of May of 1992

..... *Linda Snyder* ..... Notary Public.

My Commission Expires .. LINDA SNYDER .. 29. 1999



**NOTICE OF PUBLIC HEARING**  
On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".  
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The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.  
Copies of the proposed legislative rule are available for public review in the Gassaway Public Library, 100 Birch Street, Gassaway, WV.  
If you have any questions or comments please contact:  
G. Dale Farley  
Secretary  
West Virginia Air Pollution Control Commission  
1558 Washington St., East  
Charleston, WV 25311  
(5-13,20)

COMMISSION MEETING

JUNE 23, 1992

PLEASE PRINT

NAME	ADDRESS	COMPANY AFFILIATION
C. Bland	Chick	
W. Schwearingen	KOPPERS INDUSTRIES 436 SEVENTH AVE TGH PA	KOPPERS
Walt Stewart	Parkersburg	Dunport
Phil Snyper	"	GE PLASTICS
Ty Scandrett	5888 W. Washington St.	EEO-Numerist Inc
Jeanine Hammer	Allegheny Power Greensburg P.O. BOX 2021 ROANKE, VA	APCO
Chuck Hewett	Ohio Power Canton	OPCo
Karen Tvice	Civil Manufacturers Assn	MAD. UN.
Missy Woolventon	MVCAG.	Charleston
John Cummings	Robinson & McElwee	Charleston
Ron Smith	Dunport - bk	Dunport
J. Hollman	Coburn McCormick	Coburn







WEST VIRGINIA  
MANUFACTURERS ASSOCIATION

RECEIVED

92 JUN 23 AM 9:01

WEST VIRGINIA  
AIR POLLUTION  
CONTROL COMMISSION

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
ON  
PREVENTION OF SIGNIFICANT DETERIORATION  
REGULATION 14**

**JUNE 23, 1992**

My name is Karen Price, President of the West Virginia Manufacturers Association. The Association appreciates the opportunity to review and comment on the Air Pollution Control Commission's proposed Regulation No. 14, Prevention of Significant Deterioration, and is submitting its comments in writing to you today. However, I would like to take this opportunity today to express our major concerns with the proposal:

Changes to the regulation should reflect only those necessary to comply with the requirements of the federal Clean Air Act. For example:

The definition of "major modification" restricts the types of changes at a facility that are not considered major modifications. It does not consider an alternative fuel or raw material, an increase in hours of operation or an increase in production rate unless the change is prohibited by a federal permit or permit issued pursuant to regulations of the Commission. Thus, any of these changes could be considered as a major modification if it was prohibited by an order of the Commission.

The definition of the word "significant" is important since PSD review is required for pollutants which exceed the emission rates set forth in the definition. Some of the pollutants, such as asbestos, beryllium, mercury, vinyl chloride and lead, should be removed from the list as they are regulated under Section 112 of the Clean Air Act.

The Commission has proposed source categories that must include fugitive emissions in calculations of potential to emit. The list includes sources which are not included in the federal rule; thereby making the state rule more stringent than the federal rule, which is prohibited without demonstrated justification.

The WVMA is concerned about the one year period allowed by the Director to review and issue PSD permits. With the APCC permitting section being fully funded and staffed by the operating permit fees required by the Clean Air Act amendments, we believe six months should be adequate to issue such permits. More detailed information on each of these issues are contained in the written documents that I am submitting to you today.

Again, I want to thank the Commission for the opportunity to present the Association's concerns and comments on the proposed changes to Regulation No. 14.

RECEIVED

92 JUN 25 PM 12 25  
WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

841 Chestnut Building  
Philadelphia, Pennsylvania 19107

JUN 22 1992

Mr. G. Dale Farley, Director  
West Virginia Air Pollution Control Commission  
Department of Commerce, Labor & Environmental  
Resources  
1558 Washington Street, East  
Charleston, West Virginia 25311

Dear Mr. Farley:

EPA has reviewed the West Virginia regulations pertaining to nonattainment new source review and prevention of significant deterioration which are the subject of the public hearing to be held on June 23, 1992 and are being proposed for inclusion into the West Virginia State Implementation Plan (SIP). In general, EPA supports the new regulations and commends West Virginia in its efforts to meet the statutory SIP submittal deadline of November 15, 1992. We do, however, have the following comments. Please include these comments as part of the public hearing record.

45 CSR 19 - 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. §45-19-2. 2.35, Definition of Building, Structure, Facility or Installation. The reference to the Standard Industrial Classification Manual should be updated to the 1987 version. The Government Printing Office number for the 1987 version is GPO 1987 0-185-718: QL 3.
2. §45-19-6. 6.1.c., pertaining to the list of sources which must include fugitive emissions from the calculation of potential emissions. Since §45-19-10 requires that all sources include fugitive emissions in the application of this regulation, this section appears to be superfluous. However, to be consistent, 6.1.c. should also include §112 pollutants (hazardous air pollutants) since the 1990 CAAA only allow the exclusion of §112 pollutants from PSD regulations (§112(b)(6)).
3. §45-19-7. 7.6, pertaining to the replacement of one hydrocarbon with another based on reactivity. Although this language originates in 40 CFR Part 51 Appendix S, this language is now obsolete. The 1990 Clean Air Act Amendments (CAAA) do not address reactivity of volatile organic

compounds (VOCs). Title III of the CAAA addresses the toxicity of certain compounds and requires consideration of the relative toxicity of the compounds involved in the proposed new source or the modification. This section should also require that any emission increases and reductions be made consistent with §112 of the 1990 Clean Air Act Amendments.

4. §45-19-9. 9.1.a., pertaining to emission offsets. The requirement to obtain sufficient emission offsets should be stated as follows: "The emission offsets committed to must be obtained by the applicant's proposed start-up date...".
5. §45-9-9. 9.1.b., pertaining to external offsets. This section requires that emission reductions obtained outside West Virginia be made enforceable through a State Implementation Plan (SIP) revision. This section must also require that emission reductions obtained from another source outside the facility and not controlled by the applicant also be made enforceable through a SIP revision. We suggest the following language change: "If the emission reductions which are to be used as offset credit for a proposed major stationary source or major modification are to be obtained in a State that neighbors West Virginia or from another source at another site and not controlled by the applicant, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision so as to be federally enforceable and enforceable by the neighboring State and the Commission and at all participating sources."
6. §45-19-18. 18.1, pertaining to other applicable emission standards. There is a reference in this section to 45 CSR 27. Since this reference is unfamiliar and was not provided with this public hearing package, EPA is not able to comment on the appropriateness of this reference. Generally, emission trades (or bubbles) cannot alter New Source Performance Standards (NSPS), any Section 112 requirements (pertaining to hazardous air pollutants), any major new source or major modification requirements (pertaining to BACT and LAER).

7. §45-19-18. 18.4, pertaining to meeting the Emissions Trading Policy Statement of December 4, 1986. Since this West Virginia regulation discussing emissions trading is not specific enough to be considered a generic emissions trading regulation, any emissions trades must also be specifically required to be approved and made federally enforceable through a SIP revision. The appropriate language requiring SIP submittal of emission trades must be added.

45 CSR 14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

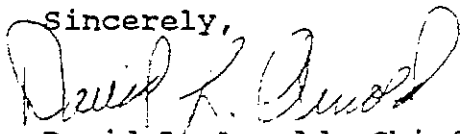
1. §45-14-2. 2.8, Definition of Building, Structure, Facility or Installation. The reference to the Standard Industrial Classification Manual should be updated to the 1987 version. The Government Printing Office number for the 1987 version is GPO 1987 0-185-718: QL 3.
2. §45-14-2. 2.25, Definition of Significant. This definition should also include municipal waste organics, metals and acid gases at the levels indicated below. We suggest the following language.

	Emission Rate
Municipal waste organics (measured as total tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans)	$3.5 \times 10^{-6}$ TPY
Municipal waste combustor metals (measured as particulate matter)	15 TPY
Municipal waste combustor acid gases (measured as the sum of SO <sub>2</sub> and HCl)	40 TPY

3. §45-14-9. 9.2, Air Quality Modeling. The reference to "the Administrator of the United States Environmental Protection Agency" should be changed to "the United States Environmental Protection Agency."

Thank you for the opportunity to comment on the West Virginia new source regulations pertaining to attainment and nonattainment areas. If you have any questions about these comments, please feel free to contact Cynthia H. Stahl at (215) 597-9337.

Sincerely,



David L. Arnold, Chief  
Program Planning Section

cc: David Porter, WV APCC



**WEST VIRGINIA  
MANUFACTURERS ASSOCIATION**

SUITE 503  
405 CAPITOL STREET  
CHARLESTON, WV 25301  
TELEPHONE (304) 342-2123

RECEIVED  
92 JUN 23 AM 9:02  
June 23, 1992

WEST VIRGINIA  
AIR POLLUTION  
CONTROL COMMISSION

Mr. G. Dale Farley  
Director  
Air Pollution Control Commission  
1558 Washington Street, East  
Charleston, West Virginia 25311

Dear Director Farley:

Enclosed are the written comments of the West Virginia Manufacturers Association ("WVMA") regarding proposed Series 14 (Prevention Of Significant Deterioration) filed May 3, 1992.

The WVMA is concerned about the differences between the federal and state definitions for "major modifications" and "significant", as well as the one year allowance for the Commission to issue PSD permits.

The WVMA appreciates the opportunity to offer these comments to the Commission, and trusts, as always, that the Commission will give these comments due and deliberate consideration. Please contact me at your convenience if you wish to discuss any of these comments.

Sincerely,

Robert L. Foster, Chairman  
Environmental, Safety & Health Committee

RLF:cmc  
Enclosure



**WEST VIRGINIA  
MANUFACTURERS ASSOCIATION**

SUITE 503  
405 CAPITOL STREET  
CHARLESTON, WV 25301  
TELEPHONE (304) 342-2123

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING AIR POLLUTION CONTROL  
COMMISSION REGULATION 14 (PREVENTION OF  
SIGNIFICANT DETERIORATION)**

June 23, 1992

---

Prepared By:

Environmental, Safety & Health Committee  
West Virginia Manufacturers Association

and

David L. Yaussy

Robinson & McElwee  
600 United Center  
Post Office Box 1791  
Charleston, West Virginia 25326  
(304) 344-5800

Counsel for  
West Virginia Manufacturers Association

**COMMENTS OF THE WEST VIRGINIA MANUFACTURERS  
ASSOCIATION REGARDING AIR POLLUTION CONTROL  
COMMISSION REGULATION 14 (PREVENTION OF  
SIGNIFICANT DETERIORATION)**

June 23, 1992

I. INTRODUCTION

The West Virginia Manufacturers Association (the WVMA) represents a broad cross-section of large and small industrial concerns throughout 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 the development of a reasonable and protective program, consistent with the federal requirements for prevention of significant deterioration of air quality (PSD).

The Clean Air Act Amendments of 1990 (Pub. L. 101-549, 42 U.S.C. §7401 *et seq.*) made substantial changes to the Clean Air Act in many areas. However, there was not much change made to Subchapter I, Part C of the Act, which deals with prevention of significant deterioration of air quality (U.S.C. §§7470-7492). Some of the changes that are proposed in 45 C.S.R. 14 (the state PSD regulation) are not compelled by the Clean Air Act Amendments of 1990 or other changes in federal regulations, and therefore the WVMA opposes incorporation of those changes because they represent a violation of the requirement that "no legislative rule or program of the commission hereafter adopted shall be any more stringent than any federal rule

or program. . ." absent an appropriate written finding by the APCC. W.Va. Code §16-20-5(a)(4).

We suggest that the summary which has been developed to accompany the state PSD regulation should be taken to heart, and that the changes in the regulation should include only those necessary to satisfy promulgation of nitrogen oxide increments, changes to certain definitions to conform to the federal regulations, and the extension of the time for a permit review to twelve months. Many of the "other minor changes in language and definitions to better conform the federal PSD regulations. . ." are unnecessary and should be dispensed with.

1. Section 2.3.e.f. and g. - The definition of major modification has been amended to restrict the types of changes at a facility that are not considered major modifications. As currently written, a "major modification" does not include use of an alternative fuel or raw material, an increase in hours of operation or an increase in production rate unless the change is prohibited by a federal permit or permit issued pursuant to regulations of the Air Pollution Control Commission ("APCC"). With the new change, the use of alternative fuel or raw material, an increase in hours of operation or an increase in production rate would constitute a physical change or change in method of operation, and hence could result in major modification, if it is prohibited by an order of the Commission. This change is not required by the federal regulations; therefore, we urge that it be deleted as unnecessary.

2. Section 2.8. - The WVMA understands that U.S. EPA has requested that the definition of "Building, Structure, Facility, or Installation" include emissions from marine vessels associated with Outer Continental Shelf Sources. Since West Virginia is far from the outer continental shelf there is no need to make the changes suggested by U.S. EPA, and the WVMA urges the Director to leave the current definition as is.

3. Section 2.20. - While the federal regulations state that secondary emissions do not include emissions from mobile sources, the definition found at Section 2.20 refers only to mobile sources which are regulated under Title II of the 1990 Clean Air Act Amendments. The definition also refers to hoteling emissions from marine vessels at dockside. These provisions are not included in the federal regulations which set the parameters of state programs (40 C.F.R. §51.165 and §52.21) and therefore are not required in the state definition.

4. Section 2.25. - The definition of the word "Significant" is important, because PSD review is required for pollutants which exceed the emission rates set forth in the definition. However, some of the pollutants referred to in the definition should no longer be listed because the PSD requirements no longer apply to them. The Clean Air Act provides, in 42 U.S.C. §7412(b)(6), that "[t]he provisions of Part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section." Section 112 of the Clean Air Act deals with hazardous air pollutants, which would include asbestos, beryllium, mercury, vinyl chloride and lead. Consequently, these pollutants and their emission rates should be

removed from the definition of "Significant," since they are no longer regulated under the PSD program.

5. Section 2.42 - Under the proposed rule, Section 2.42 has been added to provide that certain delineated compounds are excluded from the definition of the term "volatile organic compound" unless subject to an emission standard under Clean Air Act Section 111. In order to ensure that the list of compounds found in Section 2.42 remains current with the compounds which EPA excludes from the definition of VOC, the WVMA requests that a sentence be added at the end of Section 2.42 stating that "In addition, the Director may exclude any other compound which has been excluded by U.S. EPA."

6. Section 6.4 - Section 6.4 of the proposed rule grants the Director 30 days from receipt of a permit application to determine whether the application is complete. In the event the application is incomplete, the date of receipt of the application is deemed to be the date upon which the Director receives all required information. However, this section does not specifically state that the Director is required to notify the applicant of what information must be provided to complete the application. Section 6.4 merely states that the Director must determine if any deficiency exists. The net effect is that the Director could delay the running of the 12-month period for processing a permit application by repeatedly determining that additional information is needed to complete the application. To remedy this situation, the WVMA requests that Section 6.4 be revised to state as follows:

Within thirty (30) days of the receipt of a permit application for construction or relocation of a major

stationary source or for a major modification, the Director shall determine if the application is complete or if there exists any deficiency in the application or information submitted. If the application is determined to be incomplete, the Director shall notify the applicant in writing of all deficiencies and information needed to complete the application. Upon receipt of the requested information by the Director, the application shall be deemed complete for purposes of Section 6.5. If the Director subsequently determines that additional information is needed to evaluate or take final action on the application, the Director may request such information in writing and set a reasonable deadline for a response. However, the subsequent request for additional information shall not affect the calculation of the 12-month period for reviewing the application provided under Section 6.5.

7. Section 6.5 - The Director is given one year to complete its PSD review and issue a permit. Although the Director is allowed this period of time by statute, the WVMA believes that it represents an excessively long time and should be shorter where possible. The APCC will be fully funded with permit fees required by federal the Clean Air Act and there is no reason why the Director cannot hire sufficient staff to promptly review and issue permits. No more than six months should be required for an adequately staffed APCC to issue a PSD permit.

8. Section 15.3.d - This section identifies the source categories which must include fugitive emissions in their calculations of potential to emit. This list contains a number of source categories which are not listed in the federal rule. Until such time as the federal rule is amended to include those categories, they should not be added to the state rule.

9. Section 17.1 and 17.2 - The APCC is proposing to change its reference from "public meetings" to "public hearings." The WVMA presumes that such a change is not intended to reflect any change in the status and conduct of those meetings, but is nevertheless concerned that using the term "hearings" might lead someone to contend that the meetings should be conducted in accordance with the requirements of W. Va. Code §29A-5-1, which sets standards for formal hearings in contested cases that are subject to the state Administrative Procedures Act. In order to preserve the distinction between the public meetings that the Director would hold in order to receive comments, and the hearings that are required to be held in contested administrative cases, the WVMA urges the Director to continue to refer to "meetings" rather than "hearings."

Respectfully submitted this 23rd day of June, 1991.

WEST VIRGINIA MANUFACTURERS ASSOCIATION



West Virginia Department of  
Commerce, Labor & Environmental Resources  
Air Pollution Control Commission

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Office of Air Quality  
Staff Response to Commission Meeting  
of August 5, 1992  
45CSR14

1. The Commissioners, in light of the Governor's Executive Order 8-92, requested that the title of this rule be changed to reflect the present realities of organizational structure.

The title of the rule changed from "Air Pollution Control Commission" to "Division of Environmental Protection as Promulgated by West Virginia Air Pollution Control Commission".

2. The Commissioners, in light of the Governor's Executive Order 8-92, concurred with the attached "Staff Response to the Governor's Executive Order 8-92" and requested that proper changes be made.

Changes were made to nomenclature to reflect the position of the referenced "Response".



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WVAPCC Staff Response to the Governor's  
Executive Order 8-92  
(Effective July 1, 1992)

As a result of the Governor's Executive Order 8-92, questions have arisen as to the proper nomenclature for administrative functions. As of the effective date of the Executive Order (July 1, 1992):

"the name of the Division or the Director (of DEP), as may be appropriate, shall be deemed substituted for the name of the predecessor office or official in the Code; in any legal instrument or proceeding, including but not limited to existing agency rules, regulations or guidelines . . ." (Executive Order 8-92, Section 7(b)).

Revisions to rules and rules not in existence which are promulgated after the effective date of the Executive Order need to use current terminology.

Therefore, definitions of "Chief of Air Quality", "Division of Environmental Protection", and "Director" have been added or changed to reflect the status of operations since the implementation of the Executive Order.

In addition, in all areas where the term "Director" was previously used the term "Chief" or "Chief of Air Quality" is currently used. The term "Chief" or "Chief of Air Quality" has also been substituted for the term "Commission" in those areas which are not part of the Commission's appellate or rule-making authority.



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WVAPCC staff response to 6-22-92 comments by USEPA on 45 CSR 14.

Comment 1 (section 2.8)

The reference to the SIC Manual has been revised as suggested.

Comment 2 (section 2.25)

The suggested pollutants has been added.

Comment 3 (section 9.2)

The reference to the Administrator has been removed.



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WVAPCC staff response to 6-23-92 comments by WVMA on 45 CSR 14.

Comment 1 (section 2.3.e., f., g.)

The WVMA is correct in saying that the federal regulations do not require the inclusion of orders in addition to permits. OAQ staff believes that an Order such as a consent order entered pursuant to a Commission rule should have at least equal weight with any permit condition, and that the proposed language should, therefore, remain in place.

Comment 2 (section 2.8)

OAQ staff agrees that the references to Outer Continental Shelf sources should be deleted and has done so.

Comment 3 (section 2.20)

OAQ staff agrees that references to hoteling emissions of marine vessels should be deleted. Also, the rest of the definition referring to exclusions from secondary emissions has been modified to match 40 CFR 51.166(b)(18).

Comment 4 (section 2.25)

OAQ staff believes that the NESHAPs pollutants should not be deleted from this regulation. In leaving these existing provisions in the regulation, it is believed that the Commission is not substantially violating the "no more stringent" clause, since there is no proposal to add these compounds to the list, but merely to leave the existing very limited list unchanged at least until USEPA promulgates emission standards to cover all such sources.

Comment 5 (section 2.42)

OAQ staff agrees that a catch-all should be added to the list of VOC exclusions to allow the Commission to exclude compounds later determined to be photochemically non-reactive.

Comment 6 (section 6.4)

No changes were proposed to section 6.4 as part of this revision. However, after reviewing the federal language at 40 CFR 51.166(q)(1), it appears that a sentence was inadvertently omitted from 45 CSR 14. The appropriate federal language has been inserted, instead of the WVMA's proposed language.

Comment 7 (section 6.5)

OAQ staff does not agree with the WVMA's position that most PSD permits can be reviewed and issued within six (6) months. While such turn-around is possible, experience shows that six (6) months is approximately the minimum time after a complete application is filed, without consideration of the time required to resolve the issues and/or disputes associated with PSD review. The OAQ's goal, however, is to review and act upon such application within six (6) months.

Comment 8 (section 15.3.d)

Actually, the comment addresses Table 2, which follows section 15.3.d. Most of the facility types added are those for which an NSPS standard has been promulgated. EPA has commented that this list must be included in the regulation in order for it to be approved. The only newly added categories not found in the 7-1-91 edition of 40 CFR 60 are:

Hazardous Waste Incineration Facilities  
Municipal Incinerators (or combinations thereof) Capable of Charging  
More Than 50 Tons of Refuse per Day  
Outer Continental Shelf Sources as Defined in the Clean Air Act  
Amendments  
Sulfur Recovery Plants

OAQ staff agrees that the reference to Outer Continental Shelf sources should be removed, but is uncertain about the other three categories. Until/unless the uncertainty is resolved, OAQ staff agrees that the three additional categories should be removed.

Comment 9 (sections 17.1 and 17.2)

OAQ staff agrees with the WVMA comment that no change to the procedure was intended, only a change in wording to match the federal regulation. To prevent confusion with requirements in the WV Code which strictly define the procedures for a "public hearing", all references to "public hearings" will be changed back to "public meetings". Note - these references also occur in 16.3 and 16.5.

WEST VIRGINIA DEPARTMENT OF  
COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
AIR POLLUTION CONTROL COMMISSION

IN RE: Public Hearing on Proposed Amendments  
(Revisions) to Regulation 14 - "Permits for  
Construction and Major Modification of Major  
Stationary Sources of Air Pollution for the  
Prevention of Significant Deterioration."

Public Hearing on Proposed Amendments  
(Revisions) to Regulation 19 - "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."

Public Hearing on Proposed Regulation 29 -  
"Regulation Requiring the Submission of  
Emission Statements for Volatile Organic  
Compound Emissions and Oxides of Nitrogen  
Emissions."

TRANSCRIPT OF PROCEEDINGS had and/or  
testimony adduced in the hearing held before the West  
Virginia Air Pollution Control Commission in the  
Conference Room at 1558 Washington Street, East,  
Charleston, Kanawha County, West Virginia, on the 23rd day  
of June, 1992, commencing at 9:17 a.m.

APPEARANCES: L. NEWTON THOMAS, Jr., Chairman  
CREDE DOUGLASS, Vice Chairman  
JEAN C. NEELY, Commissioner  
DR. WILLIAM WALLACE  
SAMUEL KUSIC, Commissioner  
DALE FARLEY, Director  
LARRY KOPELMAN, Special Assistant A.G.

DONNA KAY MILLER  
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I N D E X

<u>Witnesses:</u>	<u>Direct</u>
<u>Regulation 14:</u>	
Karen Price	31
John Cummings	40
<u>Regulation 19:</u>	
Karen Price	96
<u>Regulation 29:</u>	
Karen Price	115

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## P R O C E E D I N G S

(9:17 A.M.)

CHAIRMAN THOMAS: Let's call the Air Pollution Control Commission to order. We will convene a hearing to consider proposed amendments to Regulations. At this time let the record indicate that a quorum of the Commission are present with the attendance of Commissioner Crede Douglass, Jean Neely, Sam Kusic, William Wallace, and L. Newton Thomas, Jr.

We have a Court Reporter whose name I did not get. Donna Miller will be transcribing the proceedings of this hearing, and anyone wishing a copy will contact her directly at the conclusion of the hearing.

The first subject before the hearing is the proposed amendments to Regulation 14, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution For the Prevention of Significant Deterioration.

There was a hearing on Reg 14 back in September of 1991. However, that proposed amended regulation was withdrawn, and some additions and

modifications have been made to it and it will be considered now at this hearing for comment.

Mr. Farley, do you want to introduce that?

MR. FARLEY: As you noted, the Reg 14 was revised or amended with a notice about the middle of last year, July 15, I believe, for hearing. The primary focus of the amendments made at that point last year was to incorporate the nitrogen oxides increments that EPA has established in its rule making and make some other minor changes which we will talk about when we visit that.

In making general comments here about the NSR in general -- new source review programs in general, Regs 14 and 19 somewhat hang together in the sense that they both deal with nonattainment or a major source permitting either nonattainment areas or areas believed to be attaining standards.

If you really look at what is driving the timing of really Reg 19 changes in the hearing today, the Clean Air Act Amendments of 1990 basically mandate that the state update its nonattainment major source review regs on schedules of June 30, 1992. So we won't make that

date anyway really if you have  $PM_{10}$  nonattainment areas as it relates to  $PM_{10}$ , and by November 15, 1992 for ozone and other pollutants.

EPA pretty much cites the November date in relation to what they think our obligation is because they seem to be a little more focused on the ozone issues, but in reviewing -- I will have a Staff Engineer here to try to go over some of the changes when we get into 19, but in reviewing 19 and trying to do an update to that, that sort of flags some changes that were perhaps needed to 14 just to have conforming types of language changes, minor changes to Reg. 14.

Also -- and this may be the principal change we are making to 14 and a change we are also incorporating into 19 when we get to that hearing -- we are putting new sections into these regs to establish a new permit track, I think in the length of time lines, public participation procedures to a certain extent which ensue from the changes to Air Pollution Control Law in the last legislative session.

As you have probably heard at some of the meetings we have had along the way, the PSD program and

the major source permitting activities in general does not lend itself in any cases at all to meeting the old 90-day time lines we have for issuance of permits under the old Code sections. That is something we have talked about a number of times.

The Code has now been amended to provide for up to a year review of major projects, of major sources, and we have revised both Regs 19 and 14 to incorporate that kind of time line in the process.

I think we have also in 14 and 19 in lieu of referencing public meetings, or meeting, in relation to public participation on permits -- we have now made that hearings.

I think with those general comments I can now, if you would like, turn that discussion over as far as the specific changes or the nature of the changes to 14 to Dave Porter of the Staff, and he can sort of answer any questions you have about this.

MR. PORTER: My name is Dave Porter. I am a Staff Engineer with the APCC, and if you would prefer, I will just go over changes to Reg 14, what is different from last year, not to revisit what you have

already approved last year.

CHAIRMAN THOMAS: That is fine.

MR. PORTER: In changing Regs 14 and 19 we sent a draft to the EPA and we got some comments back from them, and some of the changes you see are in response to their comments.

On Page 4 of Reg 14, Section 2.8, they commented that we needed to address the Outer Continental Shelf sources in our new PSD regulations. So I took their suggested language and put it in the regulation as they told me to.

The next change is at Section 2.16. They requested that we make all references to Section 107 subsections -- just refer back to Section 107 and not refer to the subsections.

COMMISSIONER NEELY: Excuse me, where are you now?

MR. PORTER: I am on 2.16 (a) on Page 6.

COMMISSIONER NEELY: Thank you.

MR. PORTER: 2.20 on Page 7, that was in response also to an EPA comment about hoteling emissions from marine vessels while at dockside and some changes to

the language about secondary emissions from what we had last year. I took their suggested language once again and inserted it in the regulation.

COMMISSIONER NEELY: Do we have a description or a definition of what you are talking about?

MR. PORTER: The way it was described to me by Cynthia Stall from EPA Region 3 was that it was emissions from vessels while they were tied up at the dock as opposed to in transit.

COMMISSIONER NEELY: What are they going to emit? Would they have a diesel engine going or something, or is it electricity? Is that what you are talking about?

MR. PORTER: The first time I ever heard the expression was when I got their comment.

MR. FARLEY: If I might interject, that was sort of laughable. We were just going to pass over it and leave it out originally and EPA made the comment and we said -- I think we finally said well, let's leave it in there if for no other reason than it might give somebody a gleaning as to how you make the distinction between secondary emission and primary emission for other similar

types, like barge unloading or something, but other than that it is a pretty absurd, I think, insertion.

COMMISSIONER NEELY: This is any marine vessel, I think. It can be a barge or a tug.

MR. PORTER: In Section 2.42 on Page 11 I added six compounds to the list of compounds that are not VOCs; and on that list I just discovered yesterday I left out three I should have put on that list as well. This came from the EPA comment letter once again.

In 6.1 on Page 13 I changed the language from obtaining a permit to obtaining a permit prior to commencement of construction, modification, or relocation. That was to clarify the point that you had to get a permit before you actually commenced.

In 6.2 we removed the reference to the 90-day permit review period and added a line to the end of 6.3 on Page 14. Instead of "in accordance with applicable rules and regulations of the Commission" we also added "the permit application, and any permit issued pursuant to this regulation."

In Section 6.5 we replaced the 90 days with 12 months per the Code change.

COMMISSIONER NEELY: What is the status of a plant or something that is in the process of getting a permit change, permits for this 12-month period? Is it operating or not operating?

MR. FARLEY: This is only construction. We are giving construction modification permits. So this would be a pre-construction, pre-modification permit.

COMMISSIONER NEELY: But there is no operation at all during that period?

MR. FARLEY: Right. There is nothing that can legally be done in terms of commencement of construction prior to issuance of the permit.

CHAIRMAN THOMAS: Why do you need 12 months?

MR. FARLEY: We don't in all instances. What we have found from the experience we have had with the PSD program, primarily back in the '87, '88, early '89 period when we had applications -- we had a number of them at the time -- is that once you get an application that is in good shape -- in other words, it is complete and will stand up -- you can probably get through the process in something like six months.

If you had an extremely involved application of construction work, a major chemical manufacturing facility or something like that, I doubt that you could get it in six months, but mostly what we have seen up to this point have been two generation facilities, and it pretty much takes six months.

I think the fastest track we ever put one of these on, we did that sort of to our detriment because we just didn't have things where documents are concerned-- five months, and part of that is because of the process you go through. We are obligated to do a complete evaluation, write a report of preliminary findings, publish a notice of intent to approve and allow 30 days to comment.

CHAIRMAN THOMAS: Does all that take place in the 12-month period?

MR. FARLEY: Yes. All that would take place right now supposedly in the 90-day period, but this can't happen.

CHAIRMAN THOMAS: The way I read that, it was an add on to the 12-months, but I guess not.

MR. FARLEY: No. The review process as

we would envision it would be actually issue the permit. We would quickly review the application, go through the public participation process and issue the permit within 12 months.

As I said, from experience we know with good applications it is very hard sometimes to get them all together, but once they are complete you can do them if you have -- you can commit the Staff person really to get through that without a lot of interferences or a lot of other work load -- you can probably get through those in about six months.

One thing I might comment on in relation to something I might bring up later, Virginia did a workload analysis for its PSD, permitting work -- because they have had quite a lot of applications and a lot of turmoil in some of their applications there. I think they have rejected -- if I recall their workload analysis, that a PSD review takes a full complete man year of effort.

COMMISSIONER NEELY: It takes a what?

MR. FARLEY: A complete man year of effort.

COMMISSIONER NEELY: Well, particularly

if it is very complicated, you might have to have more than the absolutely required public hearings, which means another 30 days, so on and so forth.

CHAIRMAN THOMAS: Okay.

COMMISSIONER NEELY: I am glad to see you have taken the sexist language out of this.

MR. PORTER: We did that last year.

The bottom half of 6.5, we eliminated that paragraph because it refers to the 90-day time period.

MR. FARLEY: There is also no longer a default on the major permit -- major sources. There was not a default point.

MR. PORTER: In Section 6.7 we changed maintenance of monitoring stations to operation and maintenance of monitoring stations.

The next change is at 9.1 at the bottom of Page 15. We just revised the reference to the model guidelines. The same change in 9.2.

In Section 15.3 (d), that is on Page

21 --

COMMISSIONER NEELY: On Page 18 you have

wiped out (b). Is that a previous --

MR. PORTER: That is a change.

COMMISSIONER NEELY: That is a previous change? Is that because we haven't any Class I areas?

MR. PORTER: No. That is because of a change in language in the federal regulation. If you will look just down below that, there is an added (e) that refers to Class I areas.

COMMISSIONER NEELY: Is that Class I areas anyplace or Class I areas just in the state?

MR. FARLEY: That would be anyplace, but as far as what we have jurisdiction over we would have the direct responsibility for --

COMMISSIONER NEELY: Well, let's say you had a Class I area right over in the Shenandoah National Park, for example, and you had a power plant or something that was infecting the air quality, which you do, and that was not able to maintain its Class I, who steps in in a situation like that? I mean, you will have two EPA sections.

MR. FARLEY: Well, I don't know if there is any legal problems with doing that since it is not our

air and it is not West Virginia, but the processes --

COMMISSIONER NEELY: It is not your air, but it is your pollution.

MR. FARLEY: Right, but the process would still -- as we understand, the process would be just like it was a Class I area in the state as far as who would step in and make comments, the Federal Land Manager or the National --

COMMISSIONER NEELY: The National Park Service?

MR. FARLEY: The National Park Service would have the ability to advise -- that is basically their role -- the main authority, which is the agency here, on what they thought would be the gross impact, if any, on the Class I area. If we concurred with them, I believe that our rule would say our responsibility would be to it.

COMMISSIONER NEELY: Not just us, of course, Virginia.

MR. PORTER: In Section 15.3 on Page 21 we added 21 additional source categories to the list of categories that must include fugitives in the permit in

response to the EPA comments.

We removed the reference to 112 of the Clean Air Act since NSHAP specifically removed it from the PSD, the federal rules and added a reference to Section 110, once again under EPA comment.

In 16.2 on Page 23 we put in some language about confidentiality. It did just say "excluding confidential business data." We went into a little more detail as to what we were talking about as to information entitled to protection as confidential information under the Code.

In 16.3 we added more detail on the public hearings as far as written comments and notification of the opportunity for written public comment, the opportunity for hearing, et cetera.

COMMISSIONER NEELY: Where you have a copy of the application at various places down here in 16.4, is that where you are going to send all the copies, or is that just the advertisement?

Where is going to be copies of the permit application? Is that a different --

MR. PORTER: That is in 16.2.

COMMISSIONER NEELY: Okay, one location of the proposed source. Where is that going to be? For instance, are you going to specify anything or are you just --

MR. FARLEY: Just to tell you how we do it now, when we have a PSD application, what we try to do is we go to notice of intent and issue or send out copies of the ad and graph permits and all that sort of thing -- is we try to find a public library in the area of the facility typically. Sometimes it is one of our offices if they are very close by, if it is in Wheeling or Fairmont.

COMMISSIONER NEELY: A library is better because a library has after-business hour hours.

MR. FARLEY: Right. Typically it has been a library, a public library.

MR. PORTER: In 16.5 we added language specifying that written public comments had to be received within 15 days after any public hearing.

COMMISSIONER NEELY: That doesn't make sense, does it? Does that sentence make sense?

MR. FARLEY: What is that?

COMMISSIONER NEELY: "Comments submitted

within a specified period not to exceed 15 days after any public hearing to receive comment on" -- oh, I see. That is a very complicated sentence.

MR. PORTER: In 17.2 we added language to allow the Director's designee to preside over hearings instead of the Director, and in 19.1 on Page 25 we changed the language to "in the event of a redesignation" instead of the Commission makes a redesignation, because now EPA can make redesignations on their own.

Sections 20 and 21 are the two sections that should have been in the regulations. We added the section of conflict with other rules and severability.

Larry Kopelman had suggested changes that we haven't incorporated into the draft of the regulation that you have so far. You have got two-pages saying "Suggested Changes to 45CSR14" that has got some highlights.

COMMISSIONER NEELY: This?

MR. PORTER: Yes.

COMMISSIONER NEELY: Two pages or two paragraphs?

MR. FARLEY: It is just two provisions

there on 14.

MR. PORTER: Yes. He found a typo, and he added the language in Section 20.1 that essentially says that even though Regulation 13 doesn't apply to these major sources the \$1,000 base fee still applies.

The language in Regulation 22 specifically says that is a \$1,000 base fee for a Regulation 13 source.

COMMISSIONER NEELY: I have got a question for you.

MR. PORTER: Okay.

COMMISSIONER NEELY: All through this thing we talk about the Director. What is the Director after the first of July?

MR. KOPELMAN: I read the final draft of the Executive Order this morning, and the Governor has appointed a Chief of Air Quality as the Director as it appears in all the Commission's regs and in the Code.

COMMISSIONER NEELY: What page are you on?

MS. KOPELMAN: Page 4 at the bottom, Section 4 (b).

COMMISSIONER NEELY: The Chief of Air  
Quality --

MR. KOPELMAN: Yes.

COMMISSIONER NEELY: -- shall exercise --  
is that what you are talking about -- is authorized to  
appoint?

MR. KOPELMAN: I think you are up in (a).  
It is (b).

COMMISSIONER NEELY: Are transferred to  
the Chief of Air Quality?

MR. KOPELMAN: Right. If you go on over  
to (c), it also says that all offices and functions of the  
Commission shall be exercised under the general  
supervision of the Chief of Air Quality.

The way I read those two together is  
whatever the Director does now, either pursuant to the  
Code or any regulations thereunder, those functions will  
be performed by the Chief of Air Quality.

COMMISSIONER NEELY: That is not what  
that says in (a) though. It says the Director and I  
assume that is what they are talking about, is the  
Director of the department or division or whatever it is,

whatever DEP is.

MR. KOPELMAN: Well, let's go back and read (a) then. What does (a) say?

COMMISSIONER NEELY: The Director is authorized to appoint the incumbent Director of the Air Pollution Control Commission to occupy said office --

MR. KOPELMAN: That would be the office of --

COMMISSIONER NEELY: But you have got so many directors here you don't know what you are talking about.

DR. WALLACE: That would refer back to the section on Page 2.

COMMISSIONER NEELY: But that means the Director is the DEP. So you have got so many directors, Larry, I think that it is going to create a considerable confusion. When you are sitting here looking at 45CSR14 you think the director is a director. Who is the director?

MR. PORTER: There is a definition of the director in 45 --

MR. KOPELMAN: I think to someone who

does not deal with the new DEP on a daily basis, I think you are right. There is going to be confusion.

COMMISSIONER NEELY: Why can't we call him the Chief of the Air Division or something?

CHAIRMAN THOMAS: He is.

MR. KOPELMAN: Chief of Air Quality.

COMMISSIONER NEELY: That is what I am saying. Don't you think it ought to say that in this?

DR. WALLACE: In all the regs?

CHAIRMAN THOMAS: Well, you are going to have to --

MR. DOUGLASS: We will have to go back from day one.

COMMISSIONER NEELY: Maybe what we ought to do is to have a definition -- you are the lawyer. Shouldn't we have under general or something a definition where it says major stationary source -- we also say the director?

MR. KOPELMAN: I think once the dust settles that the Commission should probably go back and do a lot of cleanup to regulations to make them more consistent with the way things will be in the future,

meaning to change the title Director in every reg to Chief of Air Quality. I don't think you should start here today.

COMMISSIONER NEELY: Well, I disagree. I think that there ought to be a statement in there saying the Director in terms of this insofar as this regulation is concerned is construed to mean the Chief of the Air Division or something like that.

We are on a cusp right now. We are just about ready to tilt over into a new system. The more clarification you offer people, I think the better. It sounds like you are empowering the man who is the political appointee with the power to grant these permits.

CHAIRMAN THOMAS: You are.

COMMISSIONER NEELY: I don't think we should be. I hope this is not a political interest point.

CHAIRMAN THOMAS: The Legislature did that.

DR. WALLACE: By giving the authority to the new agency. The other thing is this is an executive order and not Code. I think it sort of follows the Code but theoretically an executive order can change with the

next executive order.

COMMISSIONER NEELY: But they shouldn't conflict. I mean, the language is confusing.

DR. WALLACE: Your rules have a longer life. Is that what you are referring to?

MR. KOPELMAN: That is correct, yes.

CHAIRMAN THOMAS: Couldn't continuity provision 6 (b) cover that?

COMMISSIONER NEELY: What page are we on?

CHAIRMAN THOMAS: 4.6(b). That is kind of hard to read, but I am sure that that will be the --

MR. KOPELMAN: Section 7.

COMMISSIONER NEELY: Section 7?

CHAIRMAN THOMAS: It is Section 6 under mine. Section 6 is titled continuity.

COMMISSIONER NEELY: Is your's six?

MR. KOPELMAN: Mine is entitled Section 7.

CHAIRMAN THOMAS: I haven't got the new one then.

COMMISSIONER NEELY: Continuity is seven.

MR. KOPELMAN: I think so.

CHAIRMAN THOMAS: What is that?

MR. KOPELMAN: I agree with Ms. Neely that it will be confusing until people deal with the new procedures, but once it is explained to those who deal with the regulations that wherever a regulation says Director it means Chief of Air Quality -- once that is explained, I don't think there will be a problem.

COMMISSIONER NEELY: But you are fighting with the definitions in Section 1 of the Executive Order; that is all. So it seems to me that for the purpose of clarification we ought to put our own definition in this rule until this thing is -- right now it is the Director. I don't think anybody has any problem, but on the first of July it is not the Director.

MR. KOPELMAN: I was just going to give you an example of the IRS Code, the definition of home. Home is the place you intend to return to when you leave home.

COMMISSIONER NEELY: Are we going to have an encore?

MR. KOPELMAN: No.

COMMISSIONER NEELY: Well, I think it is

unnecessarily confusing, and I don't see any -- is there any problem with putting it in the definition under this 45CSR14? Is there a problem with that?

MR. KOPELMAN: It would be cleaner if you eliminated the -- see, you are defining Director for purposes of this regulation in the regulation, and it would probably be cleaner to change Director to Chief of Air Quality if that is --

COMMISSIONER NEELY: I am thinking of the workload, I guess. To go through the whole thing and change everything to Chief of Air Quality is a big job.

MR. KOPELMAN: It really isn't. The computer can do that virtually instantaneously. So that is not a big job.

COMMISSIONER NEELY: I was thinking of the days of the quill pen.

MR. KOPELMAN: You can just call it up and say change that Director to Chief of Air Quality. So that is not a big job. Don't worry about the --

DR. WALLACE: You can do it with one statement.

COMMISSIONER NEELY: That is what I am

saying. The definition would take care of it in one statement. Then you wouldn't have to change the whole thing, and then you can wait until the dust settled, as it were.

CHAIRMAN THOMAS: But that is only to this regulation. All the other regulations referring to the Director will have the same problem.

COMMISSIONER NEELY: We are going to be working on more of them.

CHAIRMAN THOMAS: But not all of them.

DR. WALLACE: I think what you are suggesting is do them all at once with some kind of qualifier that wherever it appears in the rules and regulations of the former (indicating) is now --

COMMISSIONER NEELY: Chief of Air -- whatever you are going to be.

DR. WALLACE: Right. It is an ominous kind of thing. I suspect that that is possible, but I am not positive of that.

COMMISSIONER NEELY: Can you do that in these rule making things?

MR. KOPELMAN: Yes.

DR. WALLACE: They do it in the Code when they change the Code.

COMMISSIONER NEELY: You have a rule for the rule making. I mean, change the rules for all of the different --

MR. KOPELMAN: I think so.

DR. WALLACE: You can change a law in an organization -- within a law I think they say all aforementioned references to the department now or the division or whatever --

COMMISSIONER NEELY: Yes, will now be substituted.

MR. KOPELMAN: Yes. Dale has got the right idea. Why don't we talk this over with John Ranson and the new Director, Mr. Callahan, and report back to you?

COMMISSIONER NEELY: See, there you go, the Director.

CHAIRMAN THOMAS: Yes.

MR. KOPELMAN: And we will find out what is appropriate.

CHAIRMAN THOMAS: Okay.

DR. WALLACE: And by that using the Director of the DEP here.

COMMISSIONER NEELY: They were just talking about the Director.

DR. WALLACE: I know.

CHAIRMAN THOMAS: Okay, if we can pass that for now. He is the current Director until June 30. Review that and see how we can best address that problem in the regulations.

Do you want to go ahead?

MR. PORTER: Yes. I have a letter from the EPA that we got about 3:30 on the fax machine yesterday where they had some additional comments to this latest draft on Regulation 14.

MR. FARLEY: The Commission has a copy of that up there.

COMMISSIONER NEELY: That is 19, isn't it?

MR. PORTER: That is the June 22 letter.

COMMISSIONER NEELY: It is at the end of it?

MR. PORTER: Yes. It is on Page 3 and 4

of that letter. The only really substantial comment they had was in the definition of significant. They wanted us to add three pollutants to the significance table in Section 2.25, municipal waste organics, municipal waste combustor metals, and municipal waste combustor acid gases. Those are currently not on the list, and they want us to add them.

The other two comments were pretty minor changes.

CHAIRMAN THOMAS: Is that it?

MR. PORTER: Yes.

CHAIRMAN THOMAS: Any questions for Mr. Porter?

COMMISSIONER NEELY: We are going to add these, aren't we?

CHAIRMAN THOMAS: Are you proposing that we do that?

COMMISSIONER NEELY: You haven't got them in there, but you --

MR. PORTER: Right. We just got this late yesterday.

COMMISSIONER NEELY: You have no problem

with that?

MR. PORTER: I have no problem with those changes.

CHAIRMAN THOMAS: So this proposed language is going to be added to the regulation.

Any more questions? Does anyone from the audience?

MS. PRICE: Good morning. My name is Karen Price, and I am President of the West Virginia Manufacturers Association.

CHAIRMAN THOMAS: You want to swear her in?

(Witness sworn.)

THEREUPON,

K A R E N P R I C E

being first duly sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

MS. PRICE: The Association appreciates the opportunity to review and comment on the Air Pollution Control Commission's proposed Regulation 14, and we are submitting our comments in writing. However, I would like

to take a short time this morning to express our concern with the proposal.

Changes to the regulation should reflect only those necessary to comply with the requirements of the federal Clean Air Act. For example:

The definition of "major modification" restricts the types of changes at a facility that are not considered major modifications. It does not consider an alternative fuel or raw material, an increase in hours of operation or an increase in production rate unless the change is prohibited by a federal permit issued pursuant to regulations of the Commission. Thus, any of these changes could be considered as a major modification if it was prohibited by an order of the Commission.

The definition of the word "significant" is important since PSD review is required for pollutants which will exceed emission rates set forth in the definition. Some of the pollutants, such as asbestos, beryllium, mercury, vinyl chloride and lead, should be removed from the list as they are regulated under Section 112 of the federal Clean Air Act.

The Commission has proposed source

categories that must include fugitive emissions in calculations of potential to emit. The list includes sources which are not included in the federal rule, thereby making the state rule more stringent than the federal rule, which is prohibited without demonstrated justification.

The WVMA is concerned about the one-year period allowed by the Director to review and issue PSD permits. With the Air Pollution Control Commission permitting section being fully funded and staffed by the operating permit fees required by the Clean Air Act amendments, we believe that six months should be adequate to issue such permits.

More detailed information is included in the written comments that we submitted for your consideration. I would like to thank the Commission for the opportunity to appear in regard to Regulation 14.

Thank you.

CHAIRMAN THOMAS: Any questions for Ms. Price?

COMMISSIONER NEELY: Can we have a small recess while I sort out some of these papers? I mean, I

can't even figure out what we have got here.

CHAIRMAN THOMAS: Thank you, Karen. I guess they are going to question you later.

(Witness stands aside.)

MR. FARLEY: Let me explain, if I could, one thing in relation to Karen's comments. One way we developed these rules and added various language to them -- and this is a little awkward and maybe something we do have to go back and look at -- is EPA should have already issued NSR rules, remand of the federal rules. They have got a draft. They have got, I guess, something out for review now.

We have had a lot of interaction with EPA about what should be in the state rules, since we have to sort of almost jump ahead of them because of the way we meet our own statutory commitments, at least as far as Reg 19 goes. So we have accepted a lot of their comments as things that would -- in relation to have our rule up to date.

With respect to the comment about adding the source categories for which you have to include fugitives, this is something that will be in the federal

rule. Whether we have a problem with that or we have to drop back and drop some of that out until EPA caught up sort of with what they are telling us ought to be in the rules, that is something we will have to look at, but we have had -- we are in a very awkward situation on a lot of things now because the EPA is way behind schedule even though we have statutory deadlines.

COMMISSIONER NEELY: What about the statute itself? Are these in the statute?

MR. FARLEY: I don't think so. I don't think that detail -- when you start talking about naming all the various source categories for which there is NSPS standards or something like that that now get added because EPA thinks there is ability to quantify those.

The underlying federal rules may be there in some instances and maybe all instances with these additions already, but as far as having that translated over into the NSR regulations, I think it won't be there yet in the federal rules.

We will have to look into that. That is one of the problems we are running into, that they may see -- may hear other comments on and on 19.

We have had to sort of look at what we think is clearly -- well, hopefully clearly, but we call it clearly -- clearly going to be in the federal rules which is what tells us what kind of -- the requirements we have in our rules, and this is something we are running into in a number of areas.

COMMISSIONER NEELY: How can we fix it? How can it be fixed? I am serious. Can't you have some kind of a catch-all that would say when the EPA finally makes its mind up or something like that?

MR. FARLEY: We can't do that. We are here to make the rules and that may be sort of maybe the comment here. We are sort of anticipating what may be very clearly what is going to be in federal rules or maybe not, but because we have to do a lot of interaction to find out what our rule really may consist of or what will need to be added with EPA prior to EPA's issuance of finalization of its own rules, we have got to --

COMMISSIONER NEELY: What is the alternative?

MR. FARLEY: Drop these things out until EPA does its rule making, then try to catch up.

COMMISSIONER NEELY: And then what? Then you can include amendments?

MR. FARLEY: We would have to amend the regs later.

COMMISSIONER NEELY: And how long would that take?

MR. FARLEY: That would be another year probably by the time that all happened unless we did them on emergency ruling.

CHAIRMAN THOMAS: We are dealing with the balancing of trying to encompass all of the potential requirements of the federal regs with the state law which to a degree limits our purview to the federal requirements. Those are not published yet.

So what we have to say is that we will have to review that, and if that information isn't received in a timely manner we may have to make some changes in these proposed regulations to accommodate the state law.

COMMISSIONER NEELY: Is there any doubt that vinyl chloride, for example, and all these things are not going to be listed?

MR. FARLEY: Well, see what happened -- and I was explaining that to the Chairman right before this -- when we did the update or proposed the proposed rule last year for 14 changes we left some of the NSHAP hazardous air pollutants in simply because of the way things stood at that point.

We are away from having any new max standards and blanket coverage of facilities other than what is already in the NSHAP. So we felt it was appropriate not to, I guess, rescind that authority for review until the EPA sorted out some of our programs, but if you really want to look at what underpins dropping those out within the Act, EPA basically took all hazardous air pollutants out of the old review of the PSC program when the Clean Air Act was amended.

DR. WALLACE: Because they did cover it elsewhere?

MR. FARLEY: Supposedly it was going to get covered elsewhere within a 10-year period.

DR. WALLACE: But in the interim what covers them?

COMMISSIONER NEELY: Yes, in the interim.

MR. FARLEY: In the interim unless there is a standard that either the state -- it has the ability to do so or EPA has proposed nothing other than what a company would propose just incidental to its permit application.

DR. WALLACE: In anticipation of it being conformed?

MR. FARLEY: Right. I think there is a kick-in date somewhere where if you emit more than a certain amount than it states under the Title III we would have to do source specific max type reviews and all that sort of thing, but there will be a gap in here when there is really nothing covered.

COMMISSIONER NEELY: I would like to know the reason for the request from the Manufacturers Association.

CHAIRMAN THOMAS: If we have somebody to speak to that? I think they are hanging on it being no more stringent than the previous --

COMMISSIONER NEELY: Is this the reason for your request, Ms. Price, that this is the no more stringent clause?

MS. PRICE: If it please the Commission, I would refer that question to John Cummings, who is our attorney.

COMMISSIONER NEELY: Would you like to come up here and be sworn?

(Witness sworn.)

THEREUPON,

J O H N C U M M I N G S

being first duly sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

MR. DUMMINGS: I think that comment is directed towards -- just as we have been talking about various lists that are placed in the regulations, for instance, the definition of VOC that excludes certain substances.

Like Mr. Porter said, there may be six substances that need to be added to that, and in that case we have asked that language be added to allow the Director to include any compound that EPA also excludes separate and apart from incorporating by reference future changes to the federal regulations in order to get over that

problem.

COMMISSIONER NEELY: My question is specifically why do you want the pollutants and the asbestos, beryllium, because it is more stringent? Is that the purpose of asking for this to be removed?

MR. CUMMINGS: Yes.

COMMISSIONER NEELY: Do you think that is responsible?

MR. CUMMINGS: If the substances are covered under other programs.

COMMISSIONER NEELY: Well, Doctor Wallace just asked that question, and in the meantime I got the impression that they are not covered.

MR. CUMMINGS: They will be covered under the residual permit conditions until those change.

MR. FARLEY: The way this really works is they may or may not get covered. It depends on what EPA in the long-term rule making does for specific source categories, decides to write standards on unless the state does its own standards.

There might be source categories where, for example, vinyl chloride, mercury, or lead could be

emitted that are not covered by any federal standards. That sort of falls through the cracks.

COMMISSIONER NEELY: I think that is totally irresponsible to ask for something like this, to ask the Commission to omit this because of a fluke and the fact that EPA has not been able to get their act together to get this out in time.

You are asking us to go an entire year to wait for this to catch up. I don't think that is responsible, and as a proponent to industry I think that that is an irresponsible act.

MR. CUMMINGS: Well, the alternative is that after EPA has come out with these it will take a year in order to change the regulations to catch up with that. These regulations will be coming out from EPA within --

DR. WALLACE: An alternative is to go ahead and modify some of our language here, until such time as EPA comes out and covers it under something else, it will be covered under this.

COMMISSIONER NEELY: Anything so we can pick these up. It is clearly the intent of the Congress that these things be controlled and you are sort of

nitpicking this to death, and I don't think that this is the kind of response I expect from the Manufacturers Association.

MR. CUMMINGS: Well, certainly the intent is that in the interim that they would be covered under the permits. There is going to be some lag time --

COMMISSIONER NEELY: That is a whole year.

MR. CUMMINGS: -- probably a year, before the permits are changed to implement those.

COMMISSIONER NEELY: Okay, thank you.

CHAIRMAN THOMAS: Any other questions?

DR. WALLACE: I don't really have a question. It is really a technical point. On Page 6 of the detailed comment from the Manufacturers Association the date, I think, should be 1992 instead of 1991.

COMMISSIONER NEELY: What is this?

DR. WALLACE: Page 6 of the June 23, 1992 comments it says "Respectfully submitted this 23rd day of June, 1991." You meant 1992?

MR. CUMMINGS: Yes.

CHAIRMAN THOMAS: Are there any other

questions relative to comments on Reg 14? Thank you.

(Witness stands aside.)

In hearing that question raised about the pollutants ostensibly to be regulated under Section 112 of the Clean Air Act, can it be accomplished by putting into the current regulation a reference to that in some way so that when those regulations are ultimately promulgated and include those pollutants that they become a subject of that as opposed to Rule 14?

MR. KOPELMAN: It is a very gray area.

The reason I say that is one should always keep in mind that we are a sovereign state. This is our regulation and it is improper to defer our jurisdiction to a third party generally unless it is done with great specificity.

If we had a fall-back regulation that we were deferring to and if we were very specific -- for example, this regulation controls until a set of circumstances happens and we describe how those circumstances happen and why they should happen to make them justifiable, then this happens and it falls back to our regulation -- we probably could get away with it, but unless we had a fall-back to our regulation or unless

there was a justifiable reason to not regulate, we probably could not defer our regulation to someone else's act where they regulate.

Have I totally confused you?

CHAIRMAN THOMAS: No. I understand. Of course, we are confronted with unless we have a justifiable reason to regulate, we cannot do so if we are more stringent than the federal.

MR. KOPELMAN: Without a justifiable reason, that is correct.

CHAIRMAN THOMAS: What we are searching for is a justifiable cause --

DR. WALLACE: Is it justifiable as to be covered within a year within the gap year?

COMMISSIONER NEELY: Is it justifiable or is this an obvious -- I mean, a rule of the Congress that this is in the Clean Air Act? Are we all subject to that rule waiting to be made?

MR. KOPELMAN: If this body believes that is a justifiable reason, then until the court says that it isn't, then it becomes a justifiable reason.

MR. SUTER: If I may -- I don't want to

talk through my hat. I went off and got the Clean Air Act and I am looking through it. I am trying to find the specific section, but it says that "hazardous air pollutants shall not be included under PSD," but later on -- and that is what I am having trouble finding -- it says that if you already have it in place, then you can retain it.

If I am not mistaken, our Code says "no more stringent than" refers to hereinafter the adopted, not that we already have it. I am saying we already have controls in place, that "no more stringent than" refers to things that the Commission may adopt.

This particular section I believe says -- and that is what I am looking for -- that we can go ahead and retain language that we already have. So if I find that section --

COMMISSIDNER NEELY: In other words, you don't have to relax your attainment that you have already.

MR. FARLEY: One thing I would point out, those were already in the PSD regulations, that limited number of hazardous air pollutants, and to what extent that is going to be an issue with any kind of PSD permit,

I think in just about every case where we have coke plants or something like that there is trace amounts of beryllium and maybe lead and that kind of thing out of just coal production, but we usually do some kind of PACT review on that.

We did not propose in any way to expand that beyond the current list, meaning that we have 189 hazardous air pollutants. We are not trying to expand. We just thought it would be -- we didn't really see the point in taking out, at least for now, the review authority with the limited number of NSHAPs that were already there.

MR. KOPELMAN: I think it is a good point. It goes back to some trigger, and you have to go back to the history and the genesis of the no more stringent. No more stringent in my recollection has been changed three times; no more stringent, no more stringent unless it is scientifically determined, no more stringent unless it is unique to West Virginia. It has been wooled around.

So each time a regulation falls in place under a particular code, then it is subject to the test of

that particular code. If we originally adopted the control of these hazardous air pollutants prior to the EPA's program rule or plan, then it would be exempt from the no more stringent, and if it was exempt then, then I agree with Randy that it will continue forward. Taking it out would be an option of the Commission not necessarily legally mandated.

CHAIRMAN THOMAS: It was originally included in Reg 14 just for companies.

MR. FARLEY: Yes, sir. Originally EPA had the instruction in the PSD regs that they had -- they covered all regulated pollutants and they specified what were the minimum levels of those and then where they didn't have it spelled out, it would be any increase would trigger a PACT or other type of review.

That and the Clean Air Act Amendments of 1990 -- apparently it was a compromise that was made somewhere.

The concept was to take the hazardous air pollutants out from under PSC review. So we look at the whole 189 substance list. None of that will fall under -- necessarily have to fall under because of federal

requirements the PSD program.

So the only thing we have done in the rule is just retain what pollutants were already listed at least until such time as we decide really what to do with them.

DR. WALLACE: I have one other question on the comment on the six page comments. There was a discussion of the difference between hearing and meeting. By changing the language to read at the hearing or meeting, was that not to imply that they would be held on a more formal basis?

MR. FARLEY: Yes.

COMMISSIONER NEELY: What was that?

MR. FARLEY: I think the understanding is they would be conducted more in the format of a hearing rather than just an informal meeting.

DR. WALLACE: So they would be under the requirements of Code 29 (a) (5) (1), which was referenced?

MR. FARLEY: You are on page?

DR. WALLACE: The idea was that it would be more formal anyway than just a meeting, and they wanted to imply that it would be?

MR. FARLEY: Right, and how formal that -- using the term hearing within a regulation, how formal that kind of information gathering meeting would have to be, I don't know. Maybe Larry could comment on that.

MR. KOPELMAN: Yes. It would step up to the formal requirements of the hearing pursuant to 29.

MR. FARLEY: Which is much more the concept that is set forth in the federal rules.

MR. KOPELMAN: The public meeting was originally conceived under Reg 14 back in the early seventies. Reg 13 was '72 or thereabouts?

MR. FARLEY: Yes, about that time.

MR. KOPELMAN: And the Commission at that time developed the public meeting concept versus the public hearing and allowed the Director to hold that. The federal suggested language is a more formal public hearing.

COMMISSIONER NEELY: Well, public hearing is a more formal concept, and it depends on what we are trying to achieve here. If we are trying to get dialogue and discussions back and forth, I think meetings is a

proper term. It is just input for these hearings.

MR. KOPELMAN: Just off the top of my head, the hearing would require a certain type of notice, where a meeting would not. You-all could adopt whatever standards you choose to apply to a public meeting, or the Director could even choose the form of notice and so forth, and then the method in which testimony is given can be more formal at the hearing and should be by design.

MR. FARLEY: That wouldn't preclude the holding public meetings or informal meetings anyway if somebody wanted to do it that way. We have done that at some permit application --

COMMISSIONER NEELY: It is important to make sure that you can sit down and discuss something. The hearing is so formal -- not as conducted by you, Mr. Chairman, fortunately, but in most cases it is only input and it is very frustrating to be on the other side of the table and not receive any kind of dialogue and feel that you are getting any kind of sense as to making any progress in understanding where your compromises might come. So if it does not preclude public meetings, I don't think it makes any difference.

CHAIRMAN THOMAS: Do you recall the point of reference here where it changed from public hearing to public meeting? Where does it change?

I think that public meetings for input would be conducted by the Director. Public hearings are generally conducted by the Commission.

MR. FARLEY: I don't think there is any pressure by EPA to change it.

MR. PORTER: The federal PSD language uses the term public hearing.

MR. FARLEY: Right. I am not sure that that -- I still don't know whether there is any particular EPA pressure that we change the way we do things, but we try to conform that to what is set up in the federal requirements and also to better define how we would conduct anything like that that is formally requested to the proposed public participation process laid out in the rule.

That still would not preclude us from having informal meetings or publicly announced meetings.

DR. WALLACE: Technically this is a public hearing we are having dialogue on.

COMMISSIONER NEELY: Yes, exactly. That is what I was saying, because Chairman Thomas chooses to do it this way which is, I consider, very enlightening, but I have been places where it is a bunch of dummies sitting up here and no sound is uttered.

CHAIRMAN THOMAS: Are there any other questions or comments?

Does anyone else from the audience want to make a presentation?

Hearing none, then we will conclude the discussion on Regulation 14 and the record will be open for 30 days for comment.

COMMISSIONER NEELY: Are we going to get some kind of a discussion going after Larry talks to somebody about this whole business about Director versus Chief of Air Programs or --

MR. FARLEY: We need to sort that out right away. We will just right away note -- hopefully we can get a meeting and get an understanding of what we ought to be doing, and we will let you know what --

DR. WALLACE: The air is not the only program that has that problem, I am sure.

COMMISSIONER NEELY: I am sure.

CHAIRMAN THOMAS: You will respond to these comments until they give us some of your response before our meeting in which we consider final action on Reg 14.

MR. FARLEY: Right.

CHAIRMAN THOMAS: Larry, in the interim will determine how we can best deal with the issue of reference to Director.

Let's move then to the hearing on Reg 19 revisions, 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.

Dale, do you want to give us introductory comments?

MR. FARLEY: Well, other than what I have already said, this particular regulation is in parts of it -- or at least certain language in some parts -- what is required to be changed to conform to the Clean Air Act Amendment or the requirements thereunder with the dates of June 30 as relates to  $PM_{10}$  changes and November 15 as

relates to other pollutants.

This regulation has been around quite some time. It was originally -- the base of the regulation or the regulation primarily implements the old -- I think it is Part D requirements, nonattainment permitting requirements, under the 1977 Clean Air Act Amendments.

We are revamping language that we think is either clearly required by the Clean Air Act Amendments themselves or language that maybe has been changed by some restructuring and EPA Part 51 regs, as they are called, plus the interaction we have had with the EPA and the comments we have had with the EPA as to what is going to be coming down through in their regulations once they are out. So that gives us that same issue as a problem.

We also had from way back in the process something strapped onto this regulation which is called the Bubble Concept that no one is very enthused about but it is there, and we thought at least for the time being we needed to carry some kind of an emissions trading provision which we typed up, I think, pretty considerably as far as definitive requirements or reference to

requirements just to handle certain kinds of alternative emission control plans.

So that being said, unless you have questions on anything I have stated, I would let Dave kind of take you through the changes.

COMMISSIONER NEELY: Emission trading is now what the Bubble Concept used to be; is that what you are saying?

MR. FARLEY: That is what it always was, but I think that what we try to do is more conform this language since that is any emissions trade wherein a company would come in and say "Well, we have a mix; you allow us 10 pounds from this stack and five from this, but we will emit seven and a half from each or something."

Any of those kinds of trades will have to get federal approval as a set provision anyway. So what we have tried to do is, I think, reference that.

COMMISSIONER NEELY: Now this isn't the trading between companies, is it? This is just the trading intra companies?

MR. FARLEY: This is totally intrasource, right.

CHAIRMAN THOMAS: Go ahead, Dave.

MR. PORTER: Do you prefer that I go through it point by point or just hit the high points?

CHAIRMAN THOMAS: Give us a rather quick overview.

MR. PORTER: Okay. Regulation 19 has not been changed in I believe nine years, and the federal regs that require us to have Regulation 19 have been changed quite significantly over that nine-year period. So I have tried to incorporate those changes in 40CFR51.165, which is the emission offset regulation.

I have also tried to incorporate the changes that we proposed in Reg 14 also in 19 since they are parallel regulations. One applies to nonattainment areas and the other one applies to everywhere else.

Everywhere you see Bubble Concept in the old reg, that has been changed to emission trading. There has been some grammatical cleanup. You know, just shall mean has been changed to this means, and a lot of the definitions have been completely changed to match the definitions in Regulation 14.

The federal offset in PSD regulations

have the same definitions where they have the same terms. So we tried to use the same language. Since 14 was more up-to-date, it was easier just to copy the definitions out of 14.

We changed some of the section numbering to match the rules of the Secretary of State and what the different section numbers ought to be and cleaned up some grammatical errors and typos.

Now if we go into it point by point, 2.1 on Page 2, Actual Emissions, it didn't really change the definition, but we took the wording from Regulation 14, just lifted it and inserted it in this reg so they would have identical definitions. The same for Allowable Emissions, 2.2.

On the next page Air Quality Control Region, EPA doesn't use the term Air Quality Control Region any more. It is a Section 107 designated area. It is nonattainment areas or attainment areas, and they are pretty much down in the county level in West Virginia.

So I have completely deleted 2.6, the definition for Air Quality Control Regions, because it would serve no purpose in the regulation.

I have inserted a definition that was missing. The definition of air pollution and statutory air pollution is now 2.6 up at the top of Page 4. That is a definition taken out of Reg 13 and I believe it also exists in Reg 14, the identical definition.

2.8, the additional language and the slight changes are once again to bring it in line with Regulation 14. Now it is practically verbatim with what is in the federal reg.

2.14, Emissions, once again that was changed to match Reg 14.

2.15, we changed facility to emissions unit because everywhere in the federal regulation corresponds to this. Where we have been using the term facility they have been using the term emissions unit. So that was to make it conform to federal regulation, and that is also the way it is done in Regulation 14, the same terminology.

2.17, that was in response to one of EPA's comments. They said that we had to prohibit offsets between VOC and nitrogen oxides. So that is the last line of 2.17. The last line of 2.17, "NOx may not be offset

against VOC."

2.19, Lowest Achievable Emission Rate, that was updated from the federal regulation once again. Facility is now emissions unit, and instead of modified facility it is modified stationary source.

It clears up a little confusion because the modified facility could be the whole installation, whereas the modified emissions unit could be one process area. It originally said facility for both terms.

2.20, Major Modification, same thing, took it out of Regulation 14.

On Page 6, 2.20 (e) (A), changed "legally enforceable" to "federally enforceable" just so we have the same terminology in both regulations and in federal regs. —

COMMISSIONER NEELY: What was that?

MR. PORTER: Changed "legally enforceable."

COMMISSIONER NEELY: Is that a good idea? Is that something you want to do in a state regulation?

MR. PORTER: Well, it is required language, and it was one of the definitions that was

required to be in the regulation, federally enforceable. To be part of the SIP it has to be federally enforceable, and anywhere the term legally enforceable or enforceable occurred I inserted federally enforceable.

COMMISSIONER NEELY: Okay.

MR. PORTER: In Paragraph (f) about a third of the way down the page I changed some references because EPA regs changed. 51.24 doesn't exist any more since they changed their regulations around.

2.21 (a) and (b), those were changes -- (b) was just a change to match the language the Secretary of State says we are supposed to have in the regulation for references to sections and paragraphs. (a) was to match the language in Reg 14, Section 2.21, "regulated pollutants" instead of "pollutants subject to regulation."

We took out the major stationary source for volatile organic compounds and put it in a separate definition, once again because that is the way it is in Regulation 14.

(c) Notwithstanding the major source size, that was something from the amendments to the Clean Air Act that changed the definition of a major stationary

source in ozone nonattainment areas and also the CO and PM<sub>10</sub> nonattainment areas.

I could go through that or just go to the next item. Do you want me to go through an explanation of the different source sizes?

CHAIRMAN THOMAS: I don't think it is necessary. It is pretty clear.

MR. PORTER: On Page 7, 2.23 has been changed to match Reg 14 again.

On Page 8, about a fourth of the way down the page, Paragraph (b), federally enforceable and enforceable by the Commission, once again anywhere there was anything about enforceability I put in federally enforceable.

Paragraph (c), that was in response to a comment by EPA that we must have that language in demonstrating attainment of the NAAQS in addition to the Director having relied on it in issuing the permit.

2.25, once again that references the different categories of nonattainment areas where you have different major source definitions and different required offset ratios. I think this section just references what

the categories are in the nonattainment areas.

2.26, I changed facility to emissions unit again, and the a, b, c, d and e are the offset ratios that are now required in ozone nonattainment areas.

2.27 I changed to match Reg 14 and the federal regs.

2.28, the same thing, although I did add language on federally enforceable and we added the language about consent orders, "enforceable by the Commission in any permit and/or consent order."

COMMISSIONER NEELY: Aren't we getting into problems there, the consent orders may be changed? The concept of consent orders may not be the Commission's to give.

CHAIRMAN THOMAS: May not be the what?

COMMISSIONER NEELY: The Commission's responsibility after --

CHAIRMAN THOMAS: Well, they are now. I don't know what the ultimate --

DR. WALLACE: It is in 14 today, isn't it?

COMMISSIONER NEELY: I know it. This is

a heck of a time to be doing this.

MR. PORTER: The definition of reasonable further progress was changed per EPA's comments. I took their language and inserted it.

2.30, EPA commented that we had to remove the exemption for resource recovery facilities.

COMMISSIONER NEELY: Good.

MR. PORTER: Page 10, changed the definition of secondary emissions to match Reg 14.

On what is now 2.31 and 2.32 the tables that are referenced have been changed. If you prefer, I will just wait until I get to the end of the reg because they are at the end of the regulation.

I changed the definition of source to match Regulation 14. It was a more complicated definition, and now it also matches the federal definitions because they say a source is a building, structure, facility, or installation and then they go on to define building, structure, facility, or installation.

So I have added Section 2.35 at the bottom of the page, the definition of building, structure, facility, or installation.

COMMISSIONER NEELY: It has got "marine vessels while at dockside."

DR. WALLACE: Right.

MR. PORTER: I doubt that there is any place in West Virginia within 25 miles of an outer continental shelf source.

COMMISSIONER NEELY: We would be the closest, I guess, 65.

MR. PORTER: 2.36 is the definition of federally enforceable. That is taken from Reg 14 and the federal regulations.

MR. KOPELMAN: If I could just interrupt right there, that is the reason why federally enforceable was acceptable earlier on and not legally enforceable. If you remember, when we first did 19 the feds wanted federally enforceable and we fought for legally enforceable because we didn't want to give up the sovereignty.

It is our reg and our enforceability too, but now the definition of federally enforceable includes any permit that we issue. So it is a fictitious definition. Within the definition of federally

enforceable it also means state enforceable.

COMMISSIONER NEELY: Who made that up?

MR. KOPELMAN: The feds.

COMMISSIONER NEELY: They actually had that? They said any state or the --

MR. KOPELMAN: Yes. So now it means ours or theirs.

MR. PORTER: That includes any requirement of any of our regulations.

MR. KOPELMAN: Right.

DR. WALLACE: Which regulations are based on the Clean Air Act.

COMMISSIONER NEELY: Hopefully.

MR. FARLEY: That were submitted as part of the SIP.

DR. WALLACE: As part of the SIP.

MR. PORTER: And it also includes language on the Title V operating permits. So that is already in there.

2.37 is the definition of major modification for ozone. We just forwarded it out into a separate definition instead of including it in the

definition for major modification. The same thing with major stationary source for ozone, although we have also added it is a major modification for VOC or NOx. I believe that is in the Clean Air Act Amendments too.

The EPA has required that in an ozone nonattainment area you treat NOx exactly the same way you treat VOC but that you don't add them together and consider them one pollutant.

2.39, the definition of PM<sub>10</sub>, that is also out of Reg 14. They almost all are.

2.40, VOC, the same thing, but in this list the three compounds that I left out in Reg 14 are there.

COMMISSIONER NEELY: Why?

MR. PORTER: Because I messed up in Reg 14.

DR. WALLACE: He didn't forget them here.

MR. PORTER: Yes. I forgot to put them in Reg 14.

2.41 and 2.42, particulate matter and TSP, those are also in Reg 14. The definition of offset ratio, I don't think that was defined in the federal

regulations, but we felt that it had to be defined somewhere. So we put it in and the definition of USEPA.

3.1, the additional language was put in per USEPA comments. Also 3.2 (a) and 3.2 (b) on the next page were in response to those comments.

COMMISSIONER NEELY: What is a portable facility?

MR. PORTER: They wanted the inclusion of  $PM_{1.0}$  precursors as well as  $PM_{1.0}$ . That is the point of their comment.

MR. FARLEY: I don't think we defined portable facility. We would not include it as a stationary source.

COMMISSIONER NEELY: Do we have a definition for portable facility?

MR. FARLEY: I don't know if we have a definition for portable facility anywhere in any reg, do we? I am not sure. I don't think we do.

COMMISSIONER NEELY: Well, what is it?

MR. FARLEY: It means something that can be readily moved from site to site, but it is still a stationary source. A good example would be a hot mix

asphalt plant. It is on wheels.

COMMISSIONER NEELY: Well, so is a barbecue.

MR. FARLEY: That is what we are referring to here in terms of major sources.

COMMISSIONER NEELY: I see. We have got everything else defined. I don't know why we couldn't define this.

MR. PORTER: I think the EPA hasn't bothered to define it.

COMMISSIONER NEELY: They have or have not?

MR. PORTER: I don't think they have. I may have missed it, but I don't think they have.

That paragraph, except for the grammar change at the top -- that paragraph is exactly -- it has been in there for about nine years.

COMMISSIONER NEELY: I just wonder whether we should have a definition of something like that. If there is such an animal, it should have a definition. I mean, irrespective of whether it has always been there, that doesn't make it right.

DR. WALLACE: There should be a definition somewhere.

COMMISSIONER NEELY: I think so. If they haven't got one, we can make one up, right?

CHAIRMAN THOMAS: Yes.

MR. PORTER: Section 3.4, the EPA recommended that we delete this exemption because there was no provision for exemptions for temporary sources in the federal regulations, and they required the exemption for resource recovery facilities be deleted.

MR. FARLEY: Those are changes to the federal requirements. I am sure those exemptions were originally put in based on federal rules.

MR. PORTER: Well, what they say in their comment is, "Although this exemption is still contained in 40CFR Part 51, Appendix S, EPA could not approve a SIP regulation which contains this exemption." So we pulled it.

4.1, Page 14, top of the page, B, once again we put in standard language for enforceable. It did say just "which is enforceable," and we changed it to "federally enforceable and enforceable by the Commission."

DR. WALLACE: But what Larry said earlier was anything we called federally enforceable can include the state.

COMMISSIONER NEELY: Why do you need that enforceable by the Commission?

DR. WALLACE: Is that not a redundancy?

COMMISSIONER NEELY: Is that a redundancy?

MR. PORTER: It could be.

CHAIRMAN THOMAS: I think we ought to consider leaving that out simply by virtue of the changes in the enforcement structure being proposed --

DR. WALLACE: Right, exactly, yes.

CHAIRMAN THOMAS: Either leave it out or the Commission in its success or whatever, but I think leave it out.

COMMISSIONER NEELY: We had better ask Larry about it. Why did you put it in there, because it has always been in there?

MR. PORTER: No, that wasn't it.

MR. FARLEY: It is probably because I looked at that section of the rule -- if you recall, we

were talking about it, and rather than say federally enforceable I would rather say -- I like the language legally enforceable better; but the EPA insists on the words federally enforceable.

COMMISSIONER NEELY: And so you feel that --

MR. FARLEY: I feel we ought to say state and federally enforceable.

DR. WALLACE: That would be consistent throughout, I suppose.

MR. FARLEY: We can look at that and see.

COMMISSIONER NEELY: We have got a definition though now in here, right?

MR. PORTER: There is a definition of federally enforceable.

COMMISSIONER NEELY: It is in 19?

MR. PORTER: It is in 19.

MR. FARLEY: If that takes care of it, that is fine.

COMMISSIONER NEELY: So you have got your federally enforceable already defined. So you can always switch back.

MR. PORTER: Paragraph C, that change was also in response to an EPA comment. They said that, "Although West Virginia is proposing to add the minimum offset ratios and a definition of offsets, which is in Section 2.26, the regulation itself needs to enclose the offset requirement."

The comments I am looking at are in EPA's April 14 letter.

COMMISSIONER NEELY: I am looking for that. I know we have got it.

MR. PORTER: It is about eight pages long. It is on Page 4, Item 21.

COMMISSIONER NEELY: I think it is the June 22 letter.

MR. PORTER: In D the statement about atmospheric simulation model not required for ozone impacts, that is also suggested language by EPA found in Item 22.

Comment 23 in their letter, we didn't really see the need to delete Paragraph (b), but we did add the Section (c) that they recommended. Phased construction projects, what they thought should replace

Paragraph (b), we stuck that in after Paragraph (b).

In the public participation requirements we added a section later in the regulation, which the whole section was pulled out of Reg 14, public participation.

We added on Page 15, 6.1 (c) -- we added the list of categories that must include fugitives from Regulation 14 with the additional 21 sources that they had in their comments.

When we sent them the draft of Reg 19 we already had added that list minus those 21, and their comment was that, "The list of source categories which must include fugitive emissions and the calculation of potential emissions must also include the following," and this bottom half of Page 5 are the comments and those 21 sources.

They also wanted us to include CTG source categories not already listed and to expand the catchall at the end of the list to include anything required to be regulated under Section 110 of the Clean Air Act. Well, as we didn't know what CTG source categories they were talking about and apparently they didn't have any regs on

them, we didn't see any way to put them in.

MR. FARLEY: That gets to that issue of prospective rule making.

MR. PORTER: And under the catchall we did put a date, as of November 15, 1990, being regulated under Section 110 or 111 of the Clean Air Act. That is the date of the Clean Air Act Amendments.

COMMISSIONER NEELY: Where is that included in here?

MR. PORTER: That is near the bottom of Page 16.

COMMISSIONER NEELY: Oh, yes, "Any other stationary source." I thought we couldn't do that.

MR. PORTER: Well, that is as of November 15, 1990. That is a date in the past. Am I right, Larry?

MR. KOPELMAN: Correct. You can adopt by reference. That is all that does.

COMMISSIONER NEELY: Okay, have we got everything that they have got on Page 5 of their page of their paper in our list without having to --

MR. PORTER: Yes, everything they

specifically list.

COMMISSIONER NEELY: Plus the catchall.

MR. PORTER: They don't do surface coating and printing operations.

COMMISSIONER NEELY: How about outer continental shelf sources? We do have it. That is ridiculous. Why do we have to put that in there?

MR. PORTER: I have tried to tell them we didn't have an outer continental shelf.

MR. FARLEY: I think if we took all of that out it wouldn't make any difference at all. That is just a blanket comment they put in everything. The only reason we kept that in the definitions or the areas we did is because it does somewhat educate one as to what may or may not be considered a secondary source versus primary --

COMMISSIONER NEELY: We don't even know what they are talking about.

MR. FARLEY: But it is ridiculous leaving it in there otherwise.

COMMISSIONER NEELY: I think it is a stupid thing to leave it in there.

CHAIRMAN THOMAS: Moving right along.

MR. PORTER: At the top of Page 6 they said we could grant an exemption for rocket engines.

COMMISSIONER NEELY: Six?

MR. PORTER: This is Page 6 of the comments.

COMMISSIONER NEELY: Rocket engines?

MR. PORTER: We didn't take them up on their suggestion because they didn't say must. They said we could. Anywhere they said we must do something, we tried to do that. DSC sources was one of those things where they said must.

Section 7.1, we adopted some of their suggested language. In their comment they said that this section appears to contradict the definition, but they are wrong. They confused net emission increases and offsets.

Where they say that it appears to contradict the definition of net emission increase, this section refers to an offset, not a net emission increase.

In 7.5 on Page 17 of the regulation we adopted their suggested language, although I stuck in the thing about enforceable by the Commission. So I guess we can strike that out.

In 7.5 (c) I deleted the language they suggested I delete. That is on Page 18, for your information.

In 8.1, their language, and 8.2 A, that is also their language in their comments. On Page 19 about a third of the way down the page, B, I added NOx to VOC for ozone areas.

Also, about halfway down the page, proposed VOC and/or NOx sources; and (c) the exemption, they said that that should be deleted as the state may not exempt any applicable source from these source reviews. That was an exemption for VOC sources.

Their comment 30, they said that the allowance -- this is at the bottom of Page 19 of the reg -- of 180 days for shakedown of the new source must be deleted.

COMMISSIONER NEELY: Shutting down.

MR. PORTER: Yes. They said that this allowance of up to 180 days for an existing source which would be shutting down to provide offsets to continue operation as the new source begins operation must be removed.

That confused me a little bit because there was almost identical language to that in the current federal regulations. Maybe they are going to pull it out in the draft, but it is still in the current federal reg. They said to pull it out, so we pulled it out.

Page 21 we started adding additional sections that were never addressed in the regulation previously, starting with Section 12. These sections were lifted almost verbatim from Regulation 14.

MR. FARLEY: As it was amended.

MR. PORTER: As amended, yes, as the draft has been answered. Section 12, permit requirements; Section 13, public review procedures. There never were any public review procedures prior to this in this regulation. It didn't really even say that you had to get a permit as far as we could tell.

MR. FARLEY: Let me make one comment. What we have attempted to do with Regs 14 and 19 is not only parallel what is now in the Code but also make these regulations contain all the administrative requirements of public participation procedures so that they can stand on their own and you can detach them from Regulation 13,

because ultimately we may do away with Reg 14 or substantially change it in the context of what we do in Title V.

Reg 19 had no written provisions for getting a permit in it at all originally. It just told you what the requirements would be to get one. So we had to attach it to 13. Now we are making it a standard regulation or attempting to or propose to do that.

COMMISSIONER NEELY: Is there anything in any of these regs about where the public hearings take place?

MR. FARLEY: I am not sure whether we have specific language in here.

MR. PORTER: Yes. In 14.2 it just says at a convenient place as near as practical to the location of the proposed major source.

COMMISSIONER NEELY: That is it. As near as practical, who says what is going to be practical, the Director?

CHAIRMAN THOMAS: Yes.

COMMISSIONER NEELY: So if it is in the eastern panhandle, it should be somewhere in the eastern

panhandle, not in Charleston?

MR. FARLEY: When we have had public meetings what we try to do is find us -- contact the Board of Education at the closest school.

MR. PORTER: Section 15, permit transfers, cancellation and responsibility, that is 15, 16, 17. Those are all verbatim right out of Reg 14.

Then we come down to the Bubble Concept. EPA's comment was that this section should be deleted. "As mentioned above, the requirements here are not specific enough to meet the requirements of the December 4, 1986 emission trading policy statement regarding generic bubble rules. Since new sources are not permitted to bubble their emissions, this section is superfluous and must be deleted."

Well, we took out the words Bubble Concept and put in emission trading proposal, and we changed the last paragraph of what is now Section 18 which gave specific requirements on a bubble proposal. We just condensed it down to say that it had to meet all the requirements of USEPA's emission trading policy statement.

What was Section 13, EPA said that this

should be deleted, that it had to do with discretionary decisions made by the Director. Their comment was if there were new source reviews that were being disputed, the source could appeal the permit conditions, but the final decision cannot rest solely with the Commission if the issues relate to federally enforceable permit conditions.

Then on Page 26 we added two sections from Reg 14, conflict with other rules and severability, and finally on Page 27, the two tables I referred to previously, we have added a  $PM_{10}$  significance level of 15 tons per year, and in response to EPA's comment we changed the ozone significance level.

That is one that got me. I wasn't aware that it had changed that way to three different levels, one at 40 tons, one at 25 tons determined over a consecutive five-year period, and one zero, which is any amount. That is any amount of VOC. I think it should say VOC on the right column there.

On Table 19B we added the significant concentrations for  $PM_{10}$ . That is it.

Larry had some comments on the

regulation. The only one of his -- their suggested changes for 45CSR19 is one page, and it has got highlighting on it.

I have no problem with any of those changes except the last line of 15.4. This paragraph was taken out verbatim from the federal rule, and the change to "even if construction or modification of the source" -- I see no point in making that change.

The idea is that if through some change in emission limitations someone now becomes a major stationary source, they have to start the process as if they hadn't built the plant yet.

COMMISSIONER NEELY: What was the point of that?

MR. FARLEY: That is a matter of wording. Larry reviewed it. He didn't like the federal wording.

MR. KOPELMAN: David just now told me that the language came right out of the feds language. I found it convoluted. I didn't know that. So I don't have any problem with withdrawing my proposal for 15.4.

CHAIRMAN THOMAS: For 15.4?

MR. KOPELMAN: Yes.

CHAIRMAN THOMAS: You have got that federally enforceable issue there again.

MR. PORTER: Oh, okay, yes. It has got that enforceable by the Commission in there.

MR. KOPELMAN: Well, I suggested that because it should be by the -- let me go back and --

CHAIRMAN THOMAS: Well, it ought be consistent whatever we do.

MR. KOPELMAN: Right. It is for consistency purposes. David suggested taking out "or by the Commission." Federally enforceable includes permits issued by the Commission, but it doesn't necessarily include all enforceability.

So I suggest you leave it in where you suggested taking it out, and here where you do say, "or the State of West Virginia," that should be "or the Commission," because the penalties action is brought by the Commission. It is instituted by the Commission. Of course, that will be instituted by the Director, DEP.

DR. WALLACE: As long as the Commission is the authority body.

MR. KOPELMAN: Correct. So I would

recommend "or the Commission" for "or the State of West Virginia" in that, but as far as the continuing on -- and then the "such as the restriction on hours of operations," I think that should probably be in parentheses because it is an example.

In terms of the language where I changed "even if construction or modification of the source has commenced or been completed" to try to make it clearer, I don't have a problem in withdrawing that recommendation.

MR. FARLEY: I think in terms of what is summarized here that I might want to comment on too, is that one, you already saw that in 19.1. We are suggesting we clarify -- this is something Larry raised, is to -- whether we inadvertently did something we didn't want to do in relation to fees for these permits, and we suggested in 19 as well as 14 that we just make it clear that the base fees still apply.

The other point under what is 15.2, Larry -- I am not sure why it was like that in the old reg. This was taken out of 14 and changed Reg 14. We said, "the Director will cancel or suspend," which Larry said is not a very good word to use in a reg. Why it was

used originally, I don't know, but he suggested we put the word shall in.

The only other thing we wanted to do for clarification was to conform the way EPA -- federal requirements as well as clarify something that is right now a current issue with one major source permit -- is that if you start a project that has a major source permit, I think this should be the same for clarification within both Reg 14 and 19, and you have let the project completely lapse more than 18 months. You have done absolutely nothing.

There should be a way a reg should provide for cancellation of a permit for the simple reason that where you have air quality issues involved, someone can simply commence construction and let the project go forever and preclude anyone else from getting permits within the area.

CHAIRMAN THOMAS: My only concern here is the use of the word shall. Do you want to make it mandatory that you do one of those two things, or do you want to make that may and give you the option to do those two things or something else?

MR. FARLEY: Well, the word had been well. What we did, even all the way back in 13 -- I am not sure whether the word is will or shall. There has always been a provision in the regs that says if you don't act upon a permit, you will lose the permit, and the idea behind that was -- I am sure we might want to think about that a little bit and come back to you in the hearing process, but the idea behind that was because you have air quality constraints.

If someone comes forward and gets a permit and then never follows it up and you cannot get rid of the permit, that person potentially blocks anyone else from getting permits.

CHAIRMAN THOMAS: I don't have any problem with the principal. I just said do you want to make it mandatory that you do that?

MR. FARLEY: It is mandatory now depending on how you construe the word will. I think it is a little softer than shall, but it is mandatory now in both regulations. So it is a matter of whether we would strengthen that somewhat or completely make it discretionary.

MR. PORTER: It is only mandatory if the Director requests that written confirmation.

MR. FARLEY: That is true. We have to ask for proof that commencement has -- in other words, we have to show that commencement has not occurred or that there is not an ongoing process. So I don't know whether EPA in federal language -- do you know whether that is a shall? Does it say the Administrator shall?

MR. PORTER: It is a shall, I believe.

MR. FARLEY: So I guess to conform with the federal requirements or the PSD.

MR. PORTER: And for those first four changes that Larry suggested, if you make the change in Reg 19, since the language is identical in Reg 14, it should also be made in the appropriate section of 14 to keep them parallel.

CHAIRMAN THOMAS: Well, 19.1 does, I guess.

MR. PORTER: Oh, yes, 19.1, yes, it is on both sheets, but 13.3, 15.2, 15.3, 15.4, there are identical sections in Reg 14.

MR. FARLEY: I would agree. I think it

ought to be the same in both regs.

COMMISSIONER NEELY: Is there somebody looking at that precise thing that is going to sit down and look at all of these? Is that what somebody does to make sure that they are consistent.

MR. FARLEY: That they are consistent? We try to do that, but obviously we have not done that in one or two spots there where we have made these last reviews. I think the principal is still the same.

MR. KOPELMAN: To answer that question, Randall Suter's main function is regulation. He was specifically hired to work on -- Reg 33, is it, to Title V -- well, 30. My understanding is his functions include that type of work, consistency, but he wasn't involved with these rules. So we can't blame him. We will take it on ourselves.

COMMISSIONER NEELY: It didn't matter about his watching.

MR. FARLEY: Right. We did it.

CHAIRMAN THOMAS: Any questions? I have one. I notice the EPA opts to use a numbering system that I think does avoid some confusion, like we use 3.01

instead of 3.1, and then when you get to 3.10 -- I think that numbering system is better to start with the 1.01 because in some of these you get up into the double digits.

MR. PORTER: This is a sequential number from one to however far it goes, and they are separated by decimal points.

COMMISSIONER NEELY: Because the Secretary of State put some kind of --

MR. KOPELMAN: They control that. We don't have control.

CHAIRMAN THOMAS: They put the number on it?

MR. KOPELMAN: Yes.

CHAIRMAN THOMAS: Okay.

MR. SUTER: And we try to do it -- we have got a copy of their rules that says how you are supposed to do it. We try to set it up that way so they don't surprise us.

CHAIRMAN THOMAS: Let me address another point. On the public hearings for the granting of a permit under this Reg 19, the Director presides over the

hearing. He sets up the hearing and he generally makes the discretionary decision of whether he will or not grant it, and then you get over here on the emissions trading plans and bring the Commission into that in another hearing.

Would that not be the Director's discretion to deal with that issue also since the Director in the future will be -- of course, I am looking at the executive order.

MR. FARLEY: Well, the executive order -- yes, you may be right. I think the reason it was left that way --

CHAIRMAN THOMAS: All the permitting and enforcing is going to be in the hands of the Director or the Chief of Air Quality or whatever title, and the Commission will not be involved in that.

MR. KOPELMAN: I will give you the history of why that is Commission. In the old Reg 19 the Commission got involved in the Bubble Concept because it was put into a consent order in order to make it both federally and state enforceable, and the theory was all consent orders rested with the Commission.

CHAIRMAN THOMAS: Do they now under the  
new --

COMMISSIONER NEELY: Will they under the  
new system?

MR. KOPELMAN: My understanding is --  
Dale raised his hand, so maybe he has a --

MR. FARLEY: The only thing I was going  
to say about this consent order is the reason the  
Commission is involved in that as opposed to a permit is  
that when you approve an emissions trade or a bubble, you  
in essence change the regulations for that particular  
facility. You are changing their regs.

CHAIRMAN THOMAS: Okay.

MR. KOPELMAN: Now to answer your  
question will it come back to the Commission, probably  
not. It appears --

CHAIRMAN THOMAS: That is another issue.

MR. FARLEY: Because that is in lieu of a  
reg.

MR. KOPELMAN: Bubbles might if you are  
changing emission limitations.

CHAIRMAN THOMAS: If it is rule making to

change a rule, then it does come back to the Commission.

MR. KOPELMAN: I think that is an area that is going to have to be worked out because let's face it, some consent orders do affect the regulations.

MR. FARLEY: Those particularly change the reg. You change emission limits for a company different from a reg.

MR. KOPELMAN: But if the reg grants the authority to the Director, then it is clear that it would go to the Director. The Commission can do that in the regs.

MR. FARLEY: That is like a -- yes, you can do it that way, if you want to do it that way.

MR. KOPELMAN: What I think I am saying is if you --

CHAIRMAN THOMAS: That is one of those areas that needs to be clarified under the executive order. It has got to come from the Secretary and the Commission to decide what the function of the Commission will be and that perhaps is one of those areas.

MR. KOPELMAN: Yes. As I read the executive order, consent orders -- adoption and

implementation of consent orders will probably be under the Director and will come to the Commission.

COMMISSIONER NEELY: It is a form of enforcement.

CHAIRMAN THOMAS: Yes, what Jean says is correct, and what Dale is saying is there are some consent orders that are tantamount to altering the regulation. With those consent orders then the question is raised as to whether they are strict enforcement for rule making, and if they touch on rule making, then it appears to me under the order that that is under the jurisdiction of the Commission.

MR. FARLEY: Yes. That is the reason it is like that. It is a change in the rule as it specifically applies to a source, and that is also the reason EPA has to approve it-- to change it.

CHAIRMAN THOMAS: That is one of those gray areas that needs to be negotiated with the Secretary.

COMMISSIONER NEELY: What is the time table on this? Have we got another 30 days on these?

MR. KOPELMAN: I was told that by the Deputy Attorney General for Environmental Division. He

said that their understanding is that they are going to proceed to represent their clients for 30 days in July as if the order didn't exist.

In other words, they are going to go forward for another 30 days. I looked through the order just now and I don't see that place. So maybe that is just an understanding between the Attorney General and John Ranson. I don't know. I didn't see it in the order. It is a rumor.

CHAIRMAN THOMAS: You mean it is not effective July 1?

MR. KOPELMAN: No. It is effective July 1. I talked to Bob Pollitt just a few days ago. He said his division, Division of Environment Protection, which represents all of DNR and all other parts of DEP except APCC which has -- that they are going forward as if the executive order has not changed any of their representation.

COMMISSIONER NEELY: But what is going to happen after that? Are they going to have a second look at the Attorney General's office or it drops from view, or are they going to transfer over to DEP or what?

MR. KOPELMAN: I don't know. The Code says in two places, maybe three, that the Commission -- and, of course, the Commission now has dual definition of Director and the Commission, what is left of the Commission -- says the Commission can call upon the services of the Attorney General for legal services.

Now as I read the executive order this morning, Dale as Chief of the Air Branch would have the authority of the Director in the Code, but it is the Commission that calls upon the Attorney General. So there the Director of DEP would call upon the Attorney General for services.

COMMISSIONER NEELY: The thrust of my question was, we have got three regs here today for public hearing. Do we have 30 more days to go on these?

MR. KOPELMAN: Yes, but your authority for rule making has not been --

COMMISSIONER NEELY: I understand, but there are a lot of things that are going to change in two weeks or less -- 10 days -- that these regulations are working with, and this is what is confusing me, is where these are going to come out and whether or not we still

have time to change these after the first of July on these regulations under this comment period in time and so on.

MR. KOPELMAN: I think the only area of confusion is the definition of Director.

COMMISSIONER NEELY: You have got "and the Commission" in here where it is a regulatory matter, for example.

MR. KOPELMAN: That is true. Well, that under the executive order would go to the Director of DEP.

COMMISSIONER NEELY: Then I don't think the language should be in here.

MR. KOPELMAN: That is what we are going to ask Mr. Gillam.

COMMISSIONER NEELY: So we have got 30 more days in which to complete this kind of stuff and to get it -- okay...

CHAIRMAN THOMAS: Well, a lot more will be known in 30 days than we know right now.

Thank you, David. Any more questions for Mr. Porter? Thank you.

We will call for comment from representatives in the audience.

(Witness sworn.)

THEREUPON,

K A R E N P R I C E.

being first duly sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

MS. PRICE: Good morning. I appreciate the opportunity to make comments on Regulation 19 this morning on behalf of the West Virginia Manufacturers Association. We have left you with written comments; however, I would like to express our major concerns with the proposed changes.

The definition of actual emissions has been revised to allow the Director to presume that source specific allowable emissions for a unit are equivalent to actual emissions. There are no qualifications or criteria under which the Director would choose to use actual emissions as the measure of allowable emissions.

Use of actual emissions for establishing permit limitations could place manufacturing entities in West Virginia at a competitive disadvantage vis-a-vis manufacturing entities in other states because permit

modifications would be required each time their product mix was changed in such a way as to cause even a nominal increase in actual emissions.

Permits should be written to anticipate a reasonable cushion between actual and allowable emissions. The federal Clean Air Act Amendments do not require that allowable emissions be set at actual emission levels.

It is unclear to the WVMA what the changes in the definitions for major modification and major stationary source are intended to accomplish since they depend upon the emissions of any regulated pollutant.

We would suggest a definition for regulated pollutant be included stating that the term applies only to pollutants for which the Commission has promulgated emissions limitations.

As proposed, the regulatory requirements that are applicable to stationary sources of VOC also apply to major sources of nitrogen oxides except where a determination has been made that the net air quality benefits are greater in the absence of the NOx reductions from the sources concerned.

The Clean Air Act states NOx reductions

are not required in those areas where it is determined that reductions in NOx would not contribute to attainment. The WVMA therefore suggests the proposed provision be revised to reflect the federal language.

Further, we are concerned about the proposed limitation which denies sources credit for emission reductions to those that occur on or after the design year for the most current attainment demonstration. Such limitations are not imposed by the Clean Air Act.

As proposed the regulation does not require the Director to notify a permit applicant of any additional information needed to complete a permit application. It only requires the Director to determine if an application deficiency exists. A permit review and issuance could be delayed for several weeks or months.

This concludes my remarks and I again wish to thank you.

CHAIRMAN THOMAS: Any questions of Ms. Price?

MR. FARLEY: I don't think. I need to catch up and read here.

(Witness stands aside.)

MR. FARLEY: For clarification of the Commission, I would like to ask Dave what the definition of actual emissions, particularly in that regulation -- Dave, what triggered that?

MR. PORTER: It came from Section 2.23 of Reg 14.

MR. FARLEY: We took the language that was already in existence without any change whatsoever and put it over into Reg 19.

COMMISSIONER NEELY: Two point what?

MR. PORTER: 2.23.

COMMISSIONER NEELY: Okay, thank you.

MR. FARLEY: The only change is the word --

COMMISSIONER NEELY: May.

MR. PORTER: The Director may instead of the Director shall. That is it. That is the only change in Section 2.23 of Reg 14. That is the language we took and put in Reg 19. ---

COMMISSIONER NEELY: How much of a difference is there between actual emissions and allowable emissions? Isn't allowable emissions supposed to be a

target?

MR. FARLEY: There can be huge differences. It depends on what your actual emissions come from, whether it is -- they are talking about sources. Where we say source specific that usually means a permit or something like that, but when you are talking about all the rules or maybe fairly lenient permits, that could be very, very huge differences.

That has been a big issue with one or two PSC permits that have been around for some number of years. We are going to have to look into that. I won't try to make any comment on the ruling under that because that is a pretty complicated area.

MR. PORTER: That language exactly matches also the federal reg.

MR. FARLEY: What is in there now, may is the word?

MR. PORTER: The reviewing authority may presume that the source specific allowable emissions for the unit are equivalent. That is in the federal reg.

MR. CUMMINGS: In what situation is that?

MR. FARLEY: We will look into that.

CHAIRMAN THOMAS: There ought to be some rationale why that is done.

COMMISSIONER NEELY: Yes.

MR. FARLEY: That whole provision about using source specific, if you look at the PSD regulations, they are built on the concept of actual emissions changes ensuing from modification. In other words, what the net actual emissions change is for determining whether you have to get a permit and what type.

I am not sure how in carrying that over to the NSR for the nonattainment areas whether that should be directly parallel or not. I will have to look into that considering how the regs were constructed in the past.

One of the things that we have gotten into on that actual thing where we have talked about using source specific allowable emissions in lieu of actual, that has usually been something where we are in a permit review case and you have a facility that has been issued a permit, and the only thing that you can use to assume -- -- the only thing you can assume with the actual emissions is what you have permitted. It has not been constructed and

does not have an operating history. Therefore, you have to refer back to the permit.

That is one issue. That is a little bit complicated, and we have had issues with EPA about using actual emissions -- literal actual emissions for netting purposes or for permit determination purposes in lieu of using source specific allowable.

So there has been a couple of controversies that we have incurred in that provision. That has been in cases where a company had literally -- in relation to Commissioner Neely's question -- much, much lower actual emissions originally permitted because they simply never got up to their production.

So that is something that is a little bit complicated, and we will look into that when we come back --

COMMISSIONER NEELY: The question here, though is that the manufacturers in West Virginia would be unable to respond to changing market conditions on a timely basis if they changed their product mix without getting a change. It sounds to me like it is pretty tight, and if they are going to be able to change their

product, is no trade-off or anything possible?

MR. FARLEY: I think you are getting at -- unless I am misreading; I will have to read this a little better. I think what they are getting at is if you always rely literally on actual emissions instead of going back and saying well, yes, issue a permit that allowed up to so much -- you know, so many tons per year or whatever, for determination of permitting requirements, then they have a considerably more difficult time operating in what is --

This gets into sort of the operation flexibility issue that might be inherent in the Title V permits, is that once you have gone through a source specific type review and allowed an X amount of pollution of a class of compounds like B or C or whatever, then they should be able to operate within our granted emission level as opposed to being held to a historic say two-year period of emissions.

So without further comment on that -- I know that has been kind of a mess when you look at what EPA is doing specifically to utilities in looking at netting calculations and without -- I think we need to

look into that a little bit further, the whole issue as to where EPA stands in its rule making versus what we should do.

CHAIRMAN THOMAS: Do you want to respond to any of these other comments about the definition of regulated pollution?

MR. FARLEY: That is still just the same issue as to whether we ought to include -- or maybe we inadvertently included because this is a nonattainment rule. Those aren't really like hazardous air pollutants at all -- whether those ought to be included under -- is that what that issue is about, regulated pollutants?

MR. CUMMINGS: We just want to have the clarification that is in Reg 14 that indicates which substances are regulated pollutants.

MR. FARLEY: Well, within Regulation 19 -- and we may have inadvertently carried something over; we will look into that -- the only pollutants that should be even considered under 19 are criteria air pollutants because that is the only thing the reg really deals with.

So if we have inadvertently carried

anything over other than strictly criteria pollutants, we will probably end up deleting that. We will look at that. Fourteen is different than nineteen. It is only for nonattainment -- only nonattainment permitting procedures.

MR. KOPELMAN: And VOCs.

MR. FARLEY: That is used interchangeably.

I am not sure too many of the issues raised here could be dealt with readily without looking into them. The issue, for example, about the completeness determination, maybe we just need to print the language there, but completeness determination means to us within 30 days we issue a letter saying what is grossly deficient.

We may not get all the details in there about what is incorrect, because sometimes that cannot be done in 30 days, but it means if there are whole sections in an application missing or whatever, those things are flagged within 30 days.

Ideally if it is an application manageable to do that, that is something we can give a very detailed list of all the things that are missing or

incorrect or whatever. That is what our usual goal is in our completeness determination. Whether we actually list every little detail --

CHAIRMAN THOMAS: You give all the information that they are concerned with here, but it is not a valid permit application if any additional information is needed to complete the permit?

MR. FARLEY: Right. I think within the context of the 30-day review what you are really talking about is giving the most detailed review you can, but the real point of that within the federal constraint was if you have to have a backed analysis, like the PSD, a backed analysis and air quality analysis and all the other major components to that, you would look quickly to make sure they are all there, and to the extent possible you would review each component part of it for deficiencies.

But many, many times within 30 days if you have a very, very lengthy detailed application you can't review every rule, not in detail.

So that would be something that would probably come after the first pass in looking for major provisions.

CHAIRMAN THOMAS: Okay. Any other questions on Reg 19? Any other comments?

If not, that concludes our hearing on Regulation 19 modifications, and we will take a five-minute break.

(WHEREUPON, a recess was taken, after which the following proceedings were had.)

CHAIRMAN THOMAS: Let's reconvene our hearing of the Air Pollution Control Commission. We will proceed now to the hearing on proposed Regulation 29, the regulation requiring submission of emission statements for volatile organic compound emissions and oxides of nitrogen emissions.

Mr. Farley, do you want to --

MR. FARLEY: This is one of a laundry list of prescribed things under the 1990 Clean Air Act Amendments we would have to do for our ozone nonattainment areas -- we will talk about that later -- assuming those all remain nonattainment areas.

To explain the rule and then some revisions or suggested language changes that Larry

Kopelman made to or provided to us on the last draft of it, I will turn that over to John Benedict.

MR. BENEDICT: My name is John Benedict. I am Chief of the Air Programs Section within the agency.

It is a new regulation. It requires for ozone nonattainment areas that stationary sources emitting volatile organic compounds of nitrogen oxide to report on an annual basis to the Commission their actual emissions for a given year.

It is required under Section 182(a)(3)(b) of the Clean Air Act Amendments. The actual -- the regulation is due November 15, 1992. Obviously we will not meet that date. Some of the basic requirements of this proposed regulation is the annual reporting of emissions of VOCs and nitrogen oxides for stationary sources.

At this point stationary source is defined as any stationary source emitting 10 times greater VOC or a hundred times greater NOx in ozone nonattainment areas. It requires sources -- or at least the EPA would like to have sources submit this information -- the basic emissions information -- to the agency by April 15 each

year. The reason being is that the agency is to provide this information in the AIRS computer format to EPA by July 1 each year. So we have to have some lead time in order to compile the information and get it into the AIRS data base.

The Clean Air Act requires 1993 be the first year reporting, three years after the enactment of the Clean Air Act.

COMMISSIONER NEELY: Are we talking about calendar or fiscal years?

MR. BENEDICT: Calendar. Primarily it requires reporting actual emission estimates for a calendar year -- for the given calendar year and a typical summer day. When you hear the term "typical summer day," that generally refers to days during June, July and August where West Virginia has most of their ozone exceedences.

This emissions reporting requirement basically goes hand in hand with the planning activities we are to do for ozone in that this agency is required to track emissions to determine the progress of how we are going to meet the necessary reduction specified by the Clean Air Act. It has to be certified by a company

official that the emissions are true. Those are the basic requirements.

One thing we have got built into the regulation -- it is mentioned several times, and I believe that is on Page 6, starting on Page 6, the emission statement requirements -- you will see dotted throughout the requirements that we are basically asking the companies to provide certain fundamental information in a coded format.

This hopefully will allow this agency to have a quick turn around to provide this information in the required AIRS computer data base required by EPA.

So we envision that during this initial ozone inventory work that we are doing this year with the help of a contractor that we will be provided with a computerized data base that we are able to give the individual stationary sources which would enable them to more easily compile their emissions inventory and update that on an annual basis.

That is one of the reasons we are specifying that certain data elements are to include codes that we will provide the stationary sources.

The copy I believe you are working off is a copy based on comments Larry gave us yesterday, and primarily the corrections to the rule proposed is just for a matter of clarity. Case in point, on Page -- for instance Page 5, applicability, generally the old regulation we filed with the Secretary of State's office did not really have that section.

We relied mostly on the scope for the first paragraph of the regulation, and Larry felt that that should be repeated and we have come to agree with that.

So there are no substantive changes to the regulation. It is just for a matter of clarification. That is all I have.

CHAIRMAN THOMAS: Any questions of John?

Roughly how many facilities -- do you have any idea -- will fall under this requirement?

MR. BENEDICT: No. We don't, because we have historically never done extensive ozone planning. We are hoping the 1990 base year inventory will pick up a lot of sources that we never considered previously in our report, but we primarily concentrated on Step II, the

surface coaters, the paint shops and these types of activities that could be significant.

We don't really have a good count of what we would classify as a major stationary source. I will say this, my office is full of questionnaires that our MRI supplied us with mailing labels. There is 19 boxes with 1,500 questionnaires, and that is basically statewide, but a good portion of that is in concentrated areas.

COMMISSIONER NEELY: How did you get that list?

MR. BENEDICT: From our certificate to operate is our initial list, plus we had MRI, our contractor, to look through the manufacturing directory and compare SIC codes to employment levels, for instance, and to acquire additional data bases for the mail out.

COMMISSIONER NEELY: We don't get any joy from the Secretary of State's office, I take it.

MR. BENEDICT: We never even contact that and from the discussions we have had with Larry, they won't really tell you what facilities are shut down. It is not a very current list. You are likely to get whoever filed with the Secretary of State from the early 1900s.

Personally, 1,500 forms are enough to mail out. I don't want to tackle any more.

CHAIRMAN THOMAS: Is it changed from regulation to rule, the nomenclature that the EPA is using? Is that what we --

MR. BENEDICT: We have used them interchangeably. I always kind of thought maybe we ought to just use one or the other, but being the legislative rule making calls them rules, I guess we should be more consistent with them.

CHAIRMAN THOMAS: Should this not be titled nonattainment areas since that is the areas which are involved?

MR. FARLEY: We could do that. It is not something we put on the label originally.

COMMISSIONER NEELY: It is there under scope.

CHAIRMAN THOMAS: Yes, but in the title of it shouldn't it more specifically state who it applies to?

COMMISSIONER NEELY: You want that sentence to go up in the title?

CHAIRMAN THOMAS: No, just finish the title to say for nonattainment areas.

MR. BENEDICT: I can see one potential conflict in that if EPA arbitrarily designates an area as nonattainment, then that may make this regulation applicable --

CHAIRMAN THOMAS: Well, but it is qualified by the use of counties down below, nonattainment right in these counties.

COMMISSIONER NEELY: You would have to put another definition then, what is nonattainment under two point whatever.

CHAIRMAN THOMAS: Well, that is not critical. It better describes what --

COMMISSIONER NEELY: Well, it says its scope. At least it is stated in the regulation, which is actually better because it describes precisely what --

CHAIRMAN THOMAS: And that is what we want.

COMMISSIONER NEELY: Yes. We just have to redefine it.

CHAIRMAN THOMAS: Any other questions of

John? Thank you, John; good explanation.

Any other persons?

(Witness sworn.)

THEREUPON,

K A R E N P R I C E

being first duly sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

MS. PRICE: Thank you. I appreciate the opportunity to comment for a third time this morning on Regulation 29 on behalf of the West Virginia Manufacturers Association.

I would like to talk to you this morning about our major concerns with the proposed regulation, and we have left written comments that go into greater detail.

Without definitions of the terms "upsets," "downtime," and "emission estimation method," it will be extremely difficult for any source to compute emission estimates as required in Section 2.1.

It is unclear as to the relevance of the term solid waste as it is used in defining the term "annual fuel process rate" in Section 2.5.

There does not appear to be a technical justification for the 10 percent reduction in efficiency when the design efficiency is used rather than the actual control efficiency of a pollution control device.

Other technically justifiable reductions should be allowed to be used instead of a fixed percentage. SARA Title III reporting requirement for specific compounds already allow different control efficiency adjustments factors, and we would suggest that the proposed regulation be made consistent with them.

We suggest that ozone season be more accurately defined. The word plant as used in defining the term point in Section 2.21 should be replaced with the word facility.

There is no indication in the proposed regulation of the mechanism for how the Commission will exempt additional photochemically nonreactive organic compounds as listed by the EPA.

The Association is particularly concerned with the proposed requirements to submit point-by-point operating data which includes percentage annual throughput for a typical ozone day. Such information is likely to be

confidential and not necessary for the protection of the public interests.

Submission of point-by-point operating data, rather than aggregate facility emissions data, is not required by the Clean Air Act. We recommend that this proposed requirement be deleted.

Section 4.1.f.2 requires submission of process rate data for the peak ozone season daily process rate. The Association again objects to submitting operating data, rather than emission data, as required by the federal Clean Air Act and requests this section be deleted.

For consistency with SARA Title III requirements the Association recommends that certain records be retained for three rather than five years.

Again, thank you for the opportunity to make comments on Regulation 29 on behalf of the Manufacturers Association.

CHAIRMAN THOMAS: Any questions of Ms. Price?

MR. FARLEY: Just one, Karen. In relation to your comments about the content of the

emission statement, I would assume John may speak to that. One of the reasons we asked for that point-by-point data was, I guess, for one thing just to make sense of the data, but you probably are aware that the states have been obligated forever and we haven't been doing it -- I don't know if any other states do it or not -- to submit an annual emission inventory of major sources each year.

I think one of the things that was probably the intent here was to acquire enough data to update those data files to AIRS specification. Otherwise, we are going to have to ask people to do the same form twice. So that is a point I think maybe ought to be made in relation to those last comments.

MR. CUMMINGS: If it is required -- if there is any way to get around doing that point-by-point every year though --

MR. FARLEY: There has been a requirement in the state and federal regulations forever that every state -- we have never done it. We have done two and a half inventories in 20 years to my knowledge statewide -- every state's annual emissions update of its major sources: --

Obviously, I think everybody would rather prefer that once we have established what those minimal data elements are we ask for people to submit it once. It would be combined.

That is the only thing. I don't know whether that is the rationale or not, John. You can make a comment on that.

MR. BENEDICT: Point-by-point?

MR. FARLEY: Yes.

MR. BENEDICT: First of all, they would have to do a point-by-point analysis to compile emission estimates anyway in my opinion, and EPA is very serious about tracking the pollutants, precursors to ozone formation. When we do our modeling analysis it is very important to compile hourly emissions. For that reason they would have to go on a point-by-point basis.

I think they are suggesting to do a broad reporting much similar to like SARA 313, and that program was never designed to the level of detail required for ozone planning. So I really don't think that is unreasonable to require them to file certain points of specific information.

CHAIRMAN THOMAS: You think it needs to be done annually?

MR. BENEDICT: Yes, and again I envision that once this system is computerized they can merely go in on a point-by-point basis and just change the annual processing rate for that particular year and some estimation of a typical summer day. That doesn't necessarily have to be in a single day, just an average of what you think a three-month operating rate would be.

So I think it is very important -- and a minimum includes throughputs also to verify emission estimates.

Some of the other things -- I did not look at the comments. I don't know all the specifics. One thing about the arbitrary 10 percent reduction, if you do not know your actual control equipment efficiency, I don't think that is unreasonable.

One thing EPA found when they did a survey of a lot of the states that already submitted ozone plans was that facilities would typically indicate that their control equipment was operating at design efficiency whereas when EPA did audits of these facilities --

compliance audits -- they found in actuality in most situations the piece of control equipment was only operating at 80 percent its maximum efficiency.

So I think giving 10 percent is actually giving industry an additional 10 percent. Generally, they would have information to reflect the actual efficiency of that piece of control equipment, either charts or whatever information, to indicate that that piece of equipment was operating almost continuously while in the process of operating.

So I think that is fair and reasonable. However, we will look at their comments in detail and make suggestions.

CHAIRMAN THOMAS: Any questions of him?

COMMISSIONER NEELY: Obviously, I don't know anything about this, but why would information like this operating data be confidential? I mean, can your competitors know what you are making by the color of your smoke or something?

MR. CUMMINGS: By what goes in the process, yes, that can be calculated.

COMMISSIONER NEELY: Why do you care if

you are making this compound or that compound or something else?

MS. PRICE: You care because if your competitor can know what you are making, he can maybe cut into your market.

COMMISSIONER NEELY: Isn't it a matter of public record what you are making in a plant?

MS. PRICE: What you are making, your product maybe but not --

COMMISSIONER NEELY: The components of it?

MS. PRICE: -- what goes into it.

COMMISSIONER NEELY: Oh, I see.

MR. CUMMINGS: That information is in the permit application, but it is protected confidential information.

COMMISSIONER NEELY: Well, can't this be protected a little bit by -- does this get published? Would this be published?

MR. FARLEY: It would generally be available except where data items -- there are certain data items in an inventory, computer data bases, AIRS and

other things, that can supposedly be blocked. They can be held confidential and blocked.

We don't put confidential data in computer files typically anyway because we don't trust the access, but one of the things that I think just about all companies claim -- at least chemical manufacturers claim confidential across the board -- is their yearly production -- throughputs production rates, which that is just about in all inventory systems. Even though simple, that would be asked for.

MR. STEWART: And I am not sure that really your plant throughput necessarily affects what your emissions are.

CHAIRMAN THOMAS: Would you identify yourself please for the record?

MR. STEWART: I am Walt Stewart for DuPont Company. I don't think necessarily throughput through a plant necessarily affects emissions. It depends on the control devices you have on it.

MR. FARLEY: I can tell you just simplistically that when EPA compiles emission factors there is usually the assumption that the more stuff you

put through, the more emissions you have. That is not always true, as he said, but usually in putting together emission factors it is done. People attempt to do it on the amounts of emissions per unit of throughput.

So the only thing that data really does unless you are asking for calculations, which sometimes we would, is to give you a frame of reference where you might be comparing like similar units, how much is emitted from one unit per unit production compared to another just to see what the comparison is.

I am not sure how many units we have that are that alike.

MR. STEWART: Another area that the Commission needs to be sensitive to is the cost of doing this. For our facility -- now under the old air emissions inventories, it took us two man years of work to put together the information that went into those inventories. So it is not without cost to the companies that are doing this.

There was a lot of information, and basically what I am hearing is you want the same type of detailed information.

MR. FARLEY: The only comment I would like to get back on is to reiterate that same point that the state is already supposed to be doing that -- I mean, compiling even more information than is identified here for just annual inventory updates and, of course, this is now mandated by the Act as far as whatever the emission statement has to be annually. So ideally those would conform to each other.

COMMISSIONER NEELY: So this would be required by all of the states no matter -- you are from DuPont, for example, so your plants no matter where they were in the country would be doing the same thing.

MR. STEWART: We would hope so.

CHAIRMAN THOMAS: If they are a nonattainment area.

COMMISSIONER NEELY: That is what I am talking about.

CHAIRMAN THOMAS: Any other comments, questions?

COMMISSIONER NEELY: All of these things will be taken into consideration during the --

CHAIRMAN THOMAS: As normal format we

would get a response to each of the major issues in the hearings.

COMMISSIONER NEELY: Is there any reason for us to keep these? Should we keep these?

MR. FARLEY: You might want to --

COMMISSIONER NEELY: Just hang onto them.

MR. FARLEY: We will try to summarize what the comments were, but you might want to keep them for your own reference --

COMMISSIONER NEELY: Okay. I will do that.

MR. FARLEY: -- as to whether we summarize them right.

CHAIRMAN THOMAS: If there are no further comments, we will adjourn the hearing of the West Virginia Air Pollution Control Commission.

(WHEREUPON, at 12:15 p.m., the hearing was concluded.)

## REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, Donna Kay Miller, do hereby certify  
that the foregoing is, to the best of my skill and  
ability, a true and accurate transcript of all the  
testimony adduced or proceedings as set forth in the  
caption hereof.

Given under my hand this 16th day of  
July, 1992.



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Donna Kay Miller  
Certified Court Reporter