

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 14

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

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

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill 243

SECTION 64-3-1(1), PASSED ON 03/10/90

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 25, 1990


G. Dale Farley
Secretary

[PROPOSED]

45CSR14

TITLE 45
LEGISLATIVE RULES
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

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

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[PROPOSED]

45CSR14

TITLE 45
LEGISLATIVE RULES
WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

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

§45-14-1. General.

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

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

area of the State of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this regulation.

1.2. Authority. — This regulation is issued under the authority of the West Virginia Code, Chapter 16, Article 20, Section 5. This regulation relates to West Virginia Code, Chapter 16, Article 20, Section 1 through 13 inclusive.

1.3. Filing Date. —

~~This regulation was promulgated by the Commission on the 15th day of May, 1984 and filed with the Secretary of State on the 15th day of May, 1984.~~

1.4. Effective Date. —

~~The effective date of this regulation is the 14th day of June, 1984.~~

1.5. Type. — This regulation is a legislative rule as defined in West Virginia Code, Chapter 29, Article 2.

§45-14-2. Definitions.

2.1. "Major Stationary Source" means:

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

(2)b. any stationary source which emits or has the potential to emit, 250 tons per year or more of any regulated air pollutant and is not one of the stationary sources named in Table 1 of this regulation.

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

Table 1. STATIONARY SOURCES OF AIR POLLUTANTS

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

- Taconite Ore Processing Plants
- Glass Fiber Processing Plants
- Charcoal Production Plants

2.2. "Major Stationary Source for Ozone" shall mean a major stationary source of volatile organic compounds.

2.3. "Major Modification" means any physical change in or change in the method of operation of a major stationary source which results in a significant net emission increase of any regulated pollutant. However, the following actions shall do not constitute a physical change or change in the method of operation:

~~(1)~~a. Routine maintenance, repair, and replacement.

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

~~(3)~~c. Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act.

~~(4)~~d. Use of fuel generated from municipal solid waste as an alternative fuel at a steam generating unit.

~~(5)~~e. Use of an alternative fuel or raw material, provided that prior to January 6, 1975, the affected source is capable of accommodating such alternative fuel use unless such change would be prohibited by a Federal permit issued pursuant to 40 CFR 52.21 or by any permit issued pursuant to this regulation.

~~(6)~~f. An increase in the hours of operations unless such increase would be prohibited by a Federal permit issued pursuant to 40 CFR 52.21 or by any permit issued pursuant to a regulation of the Air Pollution Control Commission.

~~(7)~~g. An increase in the production rate unless such increase would be prohibited by a Federal permit issued pursuant to 40 CFR 52.21 or by any permit issued pursuant to a regulation of the Air Pollution Control Commission.

~~(8)~~h. Any change in ownership at a stationary source.

2.4. "Major Modification for Ozone" shall mean a major modification for volatile organic compounds.

2.5. "Net Emissions Increase" means the amount of emissions by which the sum of the following exceeds zero:

~~(1)~~a. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

~~(2)~~b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

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

~~(b)~~B. An increase or decrease in actual emissions is creditable only if the two following conditions are satisfied:

~~(i)~~(a) The increase or decrease in actual emissions has not been relied upon by the U.S. Environmental Protection Agency in issuing a permit pursuant to 40 CFR 52.21 or by the Commission in issuing a permit pursuant to this regulation and such permit is in effect on the date on which the increase in emissions from the particular change occurs.

~~(ii)~~(b) The increase or decrease in actual emissions of particulate matter or sulfur dioxide which occurred prior to the applicable baseline date

was required to be considered and calculated in determining the amount of maximum allowable increases remaining available.

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

~~(d)~~D. A decrease in actual emissions is creditable only to the extent that:

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

~~(ii)~~(b) It is enforceable by the Commission and ~~US-EPA~~ U.S. Environmental Protection Agency at and after the time that the actual construction on the particular change begins, and

~~(iii)~~(c) The decrease in actual emissions must have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

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

2.6. "Potential to Emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable in any permit and/or consent order issued by U.S. Environmental Protection Agency or by the

Commission. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.7. "Source, Stationary Source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.8. "Building, Structure, Facility, or Installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities ~~shall be considered as~~ are a part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

2.9. "Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any regulated pollutant.

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

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

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

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

2.12. "Necessary Preconstruction Approvals or Permits" means, for purposes of this regulation, those permits or approvals required under Federal air quality control laws and regulations and air quality control laws and regulations of the State of West Virginia.

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

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

equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.15. "Baseline Concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

(1)a. The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

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

(a)A. actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

(b)B. actual emissions increases and decreases at any stationary source occurring after the baseline date.

2.16. "Baseline Date" means the earliest date after August 7, 1977, on which the first complete application under 40 CFR 52.21 is submitted by a major stationary source or major modification subject to the requirements of 40 CFR 52.21 or the date of the first complete application required by this regulation, whichever is earlier. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

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

(2)b. The pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

2.17. "Baseline Area" means any county of the State of West Virginia in which a major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m³ (annual average) of the pollutant for which the baseline data is established.

2.18. "Allowable Emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or limits enforceable by the Commission which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1)a. The applicable standards as set forth in 40 CFR Parts 60 and 61;

(2)b. The applicable State of West Virginia emissions limitations or permit condition, including those with a future compliance date; or

(3)c. The applicable federally enforceable emissions limitations or permit condition, including those with a future compliance date.

2.19. "Federally Enforceable" means all limitations and conditions which are enforceable by the Administrator of the ~~US-EPA~~ U.S. Environmental Protection Agency including those requirements developed pursuant to 40 CFR Parts 60 and 61 requirements, rules and regulations of the approved State Implementation Plan of the State of West Virginia, and any permit requirements established pursuant to 40 CFR 52.21 or this regulation.

2.20. "Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable,

and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions shall include, but are not limited to emissions from any off-site support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification.

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

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

2.23. "Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit, as described below:

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

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

(3)c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

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

2.25. "Significant" means:

(a)a. in reference to a net emission increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (TPY)
 Nitrogen oxides: 40 TPY
 Sulfur dioxide: 40 TPY
 Particulate matter: 25 TPY
 PM₁₀: 15 TPY
 Ozone: 40 TPY of volatile organic compounds
 Lead: 0.6 TPY
 Asbestos: 0.007 TPY
 Beryllium: 0.0004 TPY
 Mercury: 0.1 TPY
 Vinyl chloride: 1 TPY
 Fluorides: 3 TPY
 Sulfuric acid mist: 7 TPY
 Hydrogen sulfide (H₂S): 10 TPY
 Total reduced sulfur (including H₂S): 10 TPY
 Reduced sulfur compounds (including H₂S): 10 TPY

(b)b. in reference to a net emissions increase or the potential of a source to emit a pollutant subject to a regulation for which the Commission has promulgated an emission or air quality standard that is not listed in Section 2.34. of this regulation, any emissions rate;

(c)c. any emissions rate associated with a major stationary source or major modification, which would construct within ten (10) kilometers of any Class I area, and have an impact on such area equal to or greater than 1 ug/m³ (24-hour average).

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

2.27. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

2.28. "Emission" refers to the release, escape, or emission of air pollutants into the air.

2.29. "Air Pollution", 'statutory air pollution', shall have the meaning ascribed to it in Section 2 of ~~Chapter 16, Article 20 of the Code of West Virginia~~ the WV Code 16-20, as amended.

2.30. "Commission" means the West Virginia Air Pollution Control Commission.

2.31. "Director" means the Director of the West Virginia Air Pollution Control Commission.

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

2.33. "Relocate, Relocation" means the physical movement of a source outside its existing plant boundaries.

2.34. "Regulated Pollutant" or "Regulated Air Pollutant" means any pollutant regulated by the Clean Air Act or the West Virginia Air Pollution Control Law and the regulations promulgated thereunder, and the following pollutants:

- Carbon Monoxide
- Nitrogen Oxides
- Particulate Matter
- PM₁₀
- Sulfur Dioxide
- Ozone (volatile organic compounds)
- Lead
- Asbestos
- Beryllium
- Mercury
- Vinyl Chloride
- Fluorides

- Sulfuric Acid Mist
- Hydrogen Sulfide (H₂S)
- Total Reduced Sulfur Compounds (including H₂S)
- Reduced Sulfur Compounds (including H₂S)

2.35. "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

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

2.37. "TSP" or "Total Suspended Particulate Matter" means particulate matter as measured by the method described in Appendix B of 40 CFR 50.

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

2.39. "Significant Impact", means an increase in the ambient air quality for a particular pollutant as follows:

Averaging time (hours)

Annual	24	8	3	1
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Pollutant:

SO ₂	1.0 ug/m ³	5.0 ug/m ³	25.0 ug/m ³
TSP	1.0 ug/m ³	5.0 ug/m ³	
PM ₁₀	1.0 ug/m ³	5.0 ug/m ³	
NO ₂	1.0 ug/m ³		
CO		0.5 mg/m ³	2.0 mg/m ³

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

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

Pollutant	Maximum Allowable Increase (ug/m ³)
Class I	
Particulate matter:	
TSP, Annual geometric mean	5
<u>TSP</u> , 24-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Class II	
Particulate matter:	
TSP, Annual geometric mean	19
<u>TSP</u> , 24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Class III	
Particulate matter:	
TSP, Annual geometric mean	37
<u>TSP</u> , 24-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

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

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

(1)a. by the Commission; or

(2)b. by the U.S. Environmental Protection Agency.

§45-14-4. Area Classification.

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

4.2. The Spruce Knob-Seneca Rocks National Recreational Area, the Cranberry National Wilderness, and the New River Gorge National Scenic River are designated as Class II.

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

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

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

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

6.1. No person shall cause, suffer, allow, or permit the construction or relocation of any major stationary source or a major modification to be commenced after the effective date of this regulation without notifying the Director of such intent and obtaining a permit(s) to so construct, modify, or relocate the major stationary source or major modification as herein provided.

6.2. Not later than ninety (90) days before such person begins actual construction or relocation of a major stationary source or major modification, the owner or operator of the source shall file with the Director a complete permit application. These applications shall contain sufficient information as, in the judgment of the Director, will enable him to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules and regulations promulgated by

the Commission in general and with the requirements of this regulation. Such information may include, but not be limited to:

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

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

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

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

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

6.3. Each permit application shall be signed by the owner or operator of the major stationary source or major modification, and such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, or relocation, and operation of the major stationary source or major modification in accordance with applicable rules and regulations of the Commission.

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

6.5. Within ninety (90) 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 issue such a permit unless he determines that the proposed major stationary source or major modification has not satisfied the requirements of this regulation, will violate applicable emission standards, will interfere with the attainment or maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this regulation, in which case he shall issue an order for the prevention of such construction, modification, or relocation. Failure to issue the permit or such order within the time prescribed shall be deemed a determination that such construction, modification, or relocation may proceed except that the requirements that the Director act within ninety (90) days of the receipt of a permit application may be extended by mutual agreement between the Director and the applicant provided, however, that the Director and the applicant enter into a written agreement to be known as an "Agreement Consenting to an Extension of the Statute of Limitations".

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

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

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

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

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

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

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

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

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

(~~1~~)a. Any National or West Virginia Ambient Air Quality Standard; or

(~~2~~)b. Any applicable maximum allowable increase over the baseline concentration in any area.

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

9.1. All estimates of ambient concentrations required under ~~45-14-8~~ Section 8 of this regulation shall be based on the applicable air quality models, data bases, and other requirements specified in the Guideline on Air Quality Models (~~QAQPS-1-2-080, US-EPA, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April, 1978~~)(EPA-450/2-78-027R with Supplement A).

9.2. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted, provided that said modification or substitution is approved by the Administrator of the U.S. Environmental Protection Agency.

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

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

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

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

10.4. For those pollutants (other than non-methane hydrocarbons) for which such an ambient air quality standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that

pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

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

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

10.7. Operation of monitoring stations required by this Section shall meet the requirements of Appendix B of 40 CFR 58 during the operation of the monitoring stations.
§45-14-11. Requirements for Additional Impacts Analysis.

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

~~(1)~~a. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value; and

~~(2)~~b. An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

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

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

12.2. The Federal Land Manager of the affected Class I area may present to the Director during the public review process developed in ~~45-14-16~~ Section 16 of this regulation a demonstration that the emissions from the proposed major stationary source or major modification would have an adverse impact on the air quality-related values (including visibility) of any ~~Federal~~ Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Director concurs with such demonstration, the Director shall deny the permit to construct.

12.3. An applicant for a permit pursuant to this regulation shall be allowed the Class I variances as provided in 40 CFR 52.21 (p) (4), (5), (6), and (7) as contained in the Code of Federal Regulations on November 30, 1983, provided, that all requirements of said 40 CFR 52.21 (p) (4), (5), (6), and (7) are met and written notification of variance in accordance with said section(s) is provided to the Director.

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

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

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

~~(2)~~b. The proposed source or modification must achieve a level of continuous emissions reduction equivalent to that which would have been required under ~~45-14-7~~Section 7 of this regulation by a date specified by the Commission.

~~(3)~~c. The source or modification would meet requirements equivalent to all requirements of this regulation, based on the emissions rate that a stationary source employing a system of best available control technology would be required to meet.

~~(4)~~d. The source or modification would not before the date specified in Section 13.4. of this regulation by the Commission:

~~(a)~~A. cause or contribute to any violation of an applicable National Ambient Air Quality Standard; or

~~(b)~~B. impact any Class I area; or

~~(c)~~C. impact any area where an applicable increment is known to be violated.

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

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

13.4. The Commission shall specify a date by which the source or modification must meet the requirements and conditions of Section 13.1. of this regulation. Such date shall not be later than four (4) years from the time of start-up or seven (7) years from permit issuance.

13.5. The Commission shall withdraw any approval to employ a system of innovative control technology made under this section of the regulation if:

~~(1)~~a. the proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

~~(2)~~b. the proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

~~(3)~~c. the Commission decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

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

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

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

~~(1)~~a. Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation as of the effective date of this regulation) over the emissions from such sources before the effective date of such an order;

~~(2)~~b. Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

~~(3)~~e. Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

~~(4)~~d. Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources so long as such exclusion is approved by the Administrator of the U. S. Environmental Protection Agency.

14.2. No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which Section 14.1.~~(1)~~a. of the regulation refers or the plan to which Section 14.1.~~(2)~~b. of this regulation refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five (5) years after the later of such effective dates.

§45-14-15. Procedures for Exemptions From Specific Sections of This Regulation.

15.1. A non-profit health or non-profit educational institution proposing to construct or relocate a major stationary source or to make a major modification may petition the Director for an exemption from the requirements of ~~45-14-7~~Sections 7 through ~~45-14-11~~.11 of this regulation.

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

15.3. Any person proposing to relocate a source or modification that is a portable stationary source which has previously received a permit under this regulation may petition the Director for an exemption from the requirements of ~~45-14-7~~Sections 7 through ~~45-14-11~~.11 of this regulation. The Director shall grant this exemption if the following conditions are met:

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

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

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

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

Table 2.

SOURCE CATEGORIES WHICH MUST INCLUDE FUGITIVE EMISSIONS

- Coal Cleaning Plants (with thermal dryers)
- Kraft Pulp Mills
- Portland Cement Plants
- Primary Zinc Smelters
- Iron and Steel Mills
- Primary Aluminum Ore Reduction Plants
- Primary Copper Smelters
- Municipal Incinerators Capable of Charging More Than 250 Tons of Refuse Per Day
- Hydrofluoric, Sulfuric, or Nitric Acid Plants
- Petroleum Refineries
- Lime Plants
- Phosphate Rock Processing Plants
- Coke Oven Batteries
- Sulfur Recovery Plants
- Carbon Black Plants (furnace process)
- Primary Lead Smelters

- Fuel Conversion Plants
- Sintering Plants
- Secondary Metal Production Plants
- Chemical Process Plants
- Fossil Fuel Boilers (or combination thereof) Totaling More Than 250 Million British Thermal Units Per Hour Heat Input
- Petroleum Storage and Transfer Units With a Total Storage Capacity Exceeding 300,000 Barrels
- Taconite Ore Processing Plants
- Glass Fiber Processing Plants
- Charcoal Production Plants
- Fossil-Fuel-Fired Steam Electric Plants of More Than 250 Million British Thermal Units Per Hour Heat Input
- Any Other Stationary Source Category Which, as of August 7, 1980, is Being Regulated Under Section 111 or 112 of the Clean Air Act.

15.4. Any person proposing to construct or relocate a major stationary source or make a major modification may petition the Director for an exemption from the requirements of ~~45-14-8.~~Sections 8 through 45-14-11.11 of this regulation with respect to a particular pollutant and the Director shall grant such exemption, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would not exceed two (2) years and impact no Class I area and no area where an applicable increment is known to be violated.

15.5. Any person proposing to modify a major stationary source that was in existence prior to March 1, 1978 located in a Class II area may petition the Director for an exemption from the requirements of ~~45-14-8.,-10.,-and-11.~~Sections 8, 10, and 11 of this regulation with respect to a particular pollutant and the Director shall grant such exemption, if the net increase in allowable emissions of each regulated pollutant from

the modification after the application of best available control technology would be less than 50 tons per year.

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

(1)a. The applicant demonstrates that the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, an air quality impact less than that listed in Table 3 of this regulation; or

(2)b. The applicant demonstrates that the existing concentrations of the pollutant in the area that the source or modification would affect are less than that listed in Table 3 of this regulation; or

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

15.7. Any person proposing to construct or relocate a major stationary source or make a major modification to a source of volatile organic compounds may petition the Director for an exemption from the requirements of Section 10.5. of this regulation that the continuous air monitoring data be representative of the year preceding the receipt of the application. The Director may grant such an exemption if the following conditions are met:

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

(2)b. The continuous air monitoring data for ozone must be gathered for a period of one (1) year and shall represent the year following the issuance of the permit, except that, if the Director determines that a complete and adequate analysis

can be accomplished with monitoring data gathered over a period shorter than one (1) year (but not less than four (4) months), the data that is required shall have been gathered over at least that shorter period.

Table 3.

DE MINIMIS AIR QUALITY IMPACTS

- Carbon Monoxide - 575 ug/m³, 8-hour average
- Nitrogen Dioxide - 14 ug/m³, annual average
- Total Suspended Particulate - 10 ug/m³, 24-hour average
- PM₁₀ - 10 ug/m³, 24-hour average
- Sulfur Dioxide - 13 ug/m³, 24-hour average
- Ozone - no minimum air quality value
- Lead - 0.1 ug/m³, 3-month average
- Mercury - 0.25 ug/m³, 24-hour average
- Beryllium - 0.001 ug/m³, 24-hour average
- Fluorides - 0.25 ug/m³, 24-hour average
- Vinyl Chloride - 15 ug/m³, 24-hour average
- Hydrogen Sulfide - 0.2 ug/m³, 1-hour average

15.8. Any person proposing to construct or relocate a major stationary source or make a major modification where such major stationary source or major modification has a net emissions increase less than one hundred (100) tons per year of volatile organic compounds, may petition the Director for an exemption from ozone monitoring required by ~~45-14-10~~ Section 10 of this regulation.

§45-14-16. Public Review Procedures.

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

16.2. The Director shall make available in at least one location in the region in which the proposed source would be constructed a copy of all materials the applicant submitted (excluding confidential business data), a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

16.3. The Director shall place a legal advertisement in a paper of general circulation in the area where the proposed source would be constructed, modified, or relocated. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, the proposed start-up date, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public meeting as well as written public comment. A public comment period of thirty (30) days shall be allowed and so stated in the advertisement.

16.4. The Director shall send a copy of the advertisement to the applicant, the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency, and any State, Federal Land Manager, whose lands may be affected by emissions from the source or modification.

16.5. Public comments submitted within thirty (30) days after the Director's public notification of an opportunity for comment upon a proposed construction or relocation of a major stationary source or major modification shall be considered by the Director before making a final decision on the approvability of the application. The Director shall make all comments available for public inspection in the same locations where the Director made available preconstruction information relating to the proposed source or modification.

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

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

§45-14-17. Public Meetings.

17.1. Public meetings to receive comments on permit applications will be held when the Director deems it appropriate or when substantial interest is expressed, in writing, by persons who might reasonably be expected to be affected by the proposed major source or major modification.

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

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

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

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

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

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

18.2. The Director will cancel or suspend a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the Director, at the Director's request, with written proof of a good faith effort that such construction, modification, or relocation has commenced. Such proof shall be provided not later than thirty (30) days after the Director's request.

18.3. The Director may cancel or suspend the permit if the plans and specifications upon which the approval was based and/or the conditions established in the permit are not adhered to.

18.4. Any person who owns and operates any particular source or modification which becomes a major stationary source or major modification solely by virtue of a relaxation in any limitation, enforceable by the U.S. Environmental Protection Agency or the State of West Virginia, on the capacity of the source or modification otherwise to emit a pollutant such as a restriction on hours of operation, shall become subject to the requirements of this regulation as though construction had not yet commenced on the source or modification.

§45-14-19. Disposition of Permits.

19.1. In the event that the Commission promulgates changes to this regulation or makes a redesignation of an attainment or non-attainment area (in accordance with Section 107 (d) of the Clean Air Act) prior to final disposition of a permit, the Director shall make final disposition of the permit application in accordance with such newly promulgated standards or redesignation.

~~Section 20. -- Effective Date.~~

~~20.1. ----- Regulation XIV shall become effective on the 14th day of June, 1984.~~



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Secretary of State

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help we can get)

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Dec 11 3 23 PM '92

FILED

TO: Tammy Mowrer

AGENCY: Air Pollution Control Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: August 27, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 14 TITLE: 45 Air Pollution Control Commission

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Randall B. Butler

TITLE OF PERSON SIGNING: STAFF ATTORNEY

DATE: 12-11-92

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.