



FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 7/15/83
Administrative Law Division

STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Carl G. Beard, II, Secretary,
Title or Position

Air Pollution Control Commission, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or Notice of Public Hearing on Proposed Regulation XIV - "Permits for Construction and Modification of Stationary Sources of Air Pollution for the Prevention of Significant Deterioration". (Notice Attached)
- other - specify

This filing pertains to

Chapter 16
Article 20
Series XIV
Section _____
Page No. _____

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

July 15, 1983

Date Submitted

Signature of Person Authorizing this Filing
Secretary

FILED IN THE OFFICE OF
A. JAMES WATKINSON
SECRETARY OF STATE

THIS DATE 7/15/83

Administrative Law Division

NOTICE OF PUBLIC HEARINGS

Pursuant to Chapter 16, Article 20 and Chapter 29A Code of West Virginia and the Federal Clean Air Act, notice is hereby given that the following public hearings will be held by the West Virginia Air Pollution Control Commission concerning the following proposed regulations:

Regulation XIV - "Permits for Construction and Modification of Stationary Sources of Air Pollution for the Prevention of Significant Deterioration."

Regulation XV - "Emission Standards for Hazardous Air Pollutants."

Regulation XVI - "Standards of Performance for New Stationary Sources."

The hearings will be held on Tuesday, September 13, 1983, beginning at 9:15 a.m. in Conference Rooms A and B of the Capitol Complex Conference Center, Second Floor, Building No. 7, 1900 Washington Street, East, Charleston, Kanawha County, West Virginia. All interested persons are invited to attend and be heard.

Any person, firm, corporation, partnership or association who desires to submit exhibits or other writings as evidence into the record of a public hearing held pertaining to the promulgation or amendment of a rule or regulation of the Commission shall submit the exhibits or other documentary evidence and eleven (11) copies thereof.

Carl G. Beard, II
Secretary
West Virginia Air Pollution
Control Commission



WEST VIRGINIA
AIR POLLUTION CONTROL COMMISSION
1558 Washington Street, East
CHARLESTON, WEST VIRGINIA 25311
TELEPHONE: 348-2275 OR 348-3286

Regulation XIV

"Permits for Construction and Modification of Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

FISCAL NOTE

I. PURPOSE:

Regulation XIV will allow the West Virginia Air Pollution Control Commission to implement the United States Environmental Protection Agency requirements and allow the State of West Virginia to have an approvable State Implementation Plan by US EPA.

II. COST:

- (1) As Regulation XIV will be a delegated US EPA program and the financial support for this program will be part of the US EPA Federal grant to the APCC.
- (2) Under the Federal Clean Air Act, all manufacturing facilities are required to meet the requirements of Regulation XIV either with US EPA or the APCC. There would be no additional cost to the source.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Permits for Construction and Modification of Stationary Sources of Air
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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Air Pollution Control Commission

Chapter 16-20
Series XIV
(1983)

Subject: Regulation XIV - "Permits for Construction and Modification of Stationary Sources of Air Pollution for the Prevention of Significant Deterioration."

Section 1. General

1.01. Intent and Purpose.

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 minimum 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, modification, or relocation of any major stationary source or major modification in any locality 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, modify, or relocate a major stationary source or major modification within the State of West Virginia. Such construction, modification, or relocation without such a permit is a violation of this regulation.

1.02. 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.

1.03. Filing Date.

This regulation was promulgated or last amended on the _____ day of _____, 1983, and was filed with the office of the Secretary of State the _____ day of _____, 1983.

1.04. Effective Date.

The effective date of this regulation is the _____ day of _____, 19____.

1.05. Type.

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

Section 2. Definitions.

2.01. "Major Stationary Source" shall mean:

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

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

(3) 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 or Equal to 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 or Equal to 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 250 Million Btu/hour Heat Input or More
- 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

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

2.03. "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 not constitute a modification of an affected source:

(1) Routine maintenance, repair, and replacement.

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

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

(5) Use of an alternative fuel or raw material, provided that prior to the effective date of this regulation, the affect source is designed to accomodate 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) 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 this regulation.

(7) 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 this regulation.

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

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

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

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

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

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs not more than five (5) years prior to the date on which the increase in emissions from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if all of the following conditions are satisfied:

(i) 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) The increase or decrease in actual emissions of particulate matter or sulfur dioxide which occurred prior to the applicable baseline date was used in determining the amount of maximum allowable increases remaining available.

(iii) The decrease in actual emissions is creditable only to the extent that the old actual emissions or old allowable emissions (whichever is lower) exceeds the new actual emissions.

(iv) The decrease in actual emissions must be enforceable by the Commission at and after the time that the actual construction of a particular change begins.

(v) 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.

(c) 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.

2.06. "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 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.

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

2.08. "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 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).

2.09. "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) 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) 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 applicable standard under 40 CFR Parts 60 and 61. 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) 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) 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) actual emissions from any major stationary source on which construction commenced after January 6, 1975; and

(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) 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) 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/m^3 (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) The applicable standards as set forth in 40 CFR Parts 60 and 61;

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

(3) The emissions rate specified as a Federally enforceable permit condition or permit condition enforceable by the Commission, including those with a future compliance date.

2.19. "Federally Enforceable" means all limitations and conditions which are enforceable by the Administrator of the U.S. EPA 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 may include, but are not limited to:

(1) Emissions coming directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a ship; and

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

(3) 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) 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
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) 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 2.22 of this regulation, any emissions rate;

(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" shall mean solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.
- 2.28. "Emission" shall refer 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, as amended.
- 2.30. "Commission" shall mean the West Virginia Air Pollution Control Commission.
- 2.31. "Director" shall mean the Director of the West Virginia Air Pollution Control Commission.
- 2.32. "Person" shall mean 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. "Relocation" shall mean the physical movement of a source outside its existing plant boundaries.

2.34. "Regulated Pollutant" or "Regulated Air Pollutant" means, for the purposes of this regulation, any of the following pollutants:

- Carbon Monoxide
- Nitrogen Oxides
- Particulate Matter
- 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" shall mean the Administrator of the U.S. Environmental Protection Agency.

Section 3. Ambient Air Quality Ceilings.

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

<u>Pollutant</u>	<u>Maximum Allowable Increase (ug/m³)</u>
Class I	
Particulate matter:	
Annual geometric mean	5
24-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

Class II

Particulate matter:	
Annual geometric mean	19
24-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Class III

Particulate matter:	
Annual geometric mean	37
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.

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

- (1) by the Commission; or
- (2) by the U.S. Environmental Protection Agency

Section 4. Area Classification.

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

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

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

Section 5. Prohibition of Dispersion Enhancement Techniques.

5.01. 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.

Section 6. Registration and Report Requirements for Major Stationary Sources and Major Modifications.

6.01. No person shall cause, suffer, allow, or permit the construction, modification, or relocation of any major stationary source or 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.

6.02. Not later than ninety (90) days, for construction, modification, or relocation of a major stationary source or major modification, prior to the time that such construction, modification, or relocation is proposed to commence, the owner or operator of the source shall file with the Director permit application forms available from the Director. 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 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) A detailed schedule for construction of the source or modification;

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

(5) 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.

6.03. 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, relocation, or operation of the major stationary source or major modification in accordance with applicable rules and regulations of the Commission.

6.04. Within thirty (30) days of the receipt of a permit application for construction, modification, or relocation of a major stationary source or 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.

- 6.05. Within ninety (90) days of the receipt of a permit application for construction, modification, or relocation of a major stationary source or 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".

- 6.06. When the Director denies a permit application for the proposed construction, modification, or relocation of any major stationary source or

major modification, the order shall set forth his reasons with reasonable specificity.

- 6.07. 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.

Section 7. Requirements Relating to Control Technology.

- 7.01. Any person proposing to construct, modify, or relocate a major stationary source or major modification shall meet each applicable emissions limitation promulgated by the Commission and each applicable emission standard and standard of performance under 40 CFR Parts 60 and 61.
- 7.02. Any person proposing to construct a new major stationary source shall apply best available control technology for each regulated pollutant that it would have the potential to emit in significant amounts.
- 7.03. Any person proposing a major modification or relocation of a major stationary source shall apply best available control technology for each regulated pollutant for which such proposed major modification or relocation of a major stationary source would cause a 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.

7.04. For any proposed construction, modification, 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 least 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.

Section 8. Requirements Relating to the Source's Impact on Air Quality.

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

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

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

Section 9. Requirements for Air Quality Models.

9.01. All estimates of ambient concentrations required under Section 8 of this regulation shall be based on the applicable air quality models, data bases, and other requirements specified in the Guideline on Air Quality

Models (OAQPS 1.2-080, U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April, 1978).

9.02. 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:

(1) The substitution or modification of a model shall be subject to public comment procedures developed in accordance with Section 16 of this regulation; and

(2) The Director approves of any substitution or modification of a model.

Section 10. Requirements for Air Quality Monitoring.

10.01. 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.

10.02. Any person proposing to construct 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 there would result in a net emissions increase.

10.03. 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.

10.04. 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.

10.05. All ambient air quality monitoring data that is required shall have been gathered over a period of one 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.

10.06. Any person proposing to construct, modify, or relocate a major stationary source or 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.

10.07. 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.

Section 11. Requirements for Additional Impacts Analysis.

11.01. Any person proposing to construct, modify, or relocate a major stationary source or major modification shall provide:

(1) 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) 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.

Section 12. Additional Requirements for Sources Impacting Federal Class I Areas.

12.01. 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.

12.02. The Federal Land Manager of the affected Class I area may present to the Director during the public review process developed in Section 16 of this regulation a demonstration that the emissions from the proposed major stationary source of 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.

Section 13. Procedures for Sources Employing Innovative Control Technology.

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

(3) 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) The source or modification would not before the date specified in Subsection 13.04 by the Commission:

(a) cause or contribute to any violation of an applicable national ambient air quality standard; or

(b) impact any Class I area; or

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

- 13.02. 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.
- 13.03. 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.
- 13.04. The Commission shall specify a date by which the source or modification must meet the requirements and conditions of Section 13.01 of this regulation. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance.
- 13.05. The Commission shall withdraw any approval to employ a system of innovative control technology made under this section of the regulation of:
- (1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
 - (2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
 - (3) 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.
- 13.06. 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 13.05 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 the end of the specified time period or the date that the approval is withdrawn, whichever is earlier.

Section 14. Exclusions From Increment Consumption.

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

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

(4) Concentrations attributable to the temporary increase in emissions of sulfur dioxide or particulate matter from stationary sources which result

from a revision to any rule or regulation of the State of West Virginia provided that the following conditions are met:

(a) The time over which the temporary emissions increase of sulfur dioxide or particulate matter would occur shall be specified by the Director and shall not exceed two (2) years unless the Director specifies that a longer time is more appropriate.

(b) The time period specified in Section 14.01(4)(a) shall not be extended.

(c) The emissions increase from the source or modification would not:

(i) impact a Class I area;

(ii) impact an area where an applicable increment is known to be violated; or

(iii) cause or contribute to the violation of a national ambient air quality standard.

(d) The emission limitations required to be in effect at the end of the time period specified in Section 14.01(4)(a) must ensure that the emission levels from stationary sources affected by the revision to the West Virginia rule or regulation would not exceed those levels occurring from such sources before the revision was promulgated by the Commission.

14.02. No exclusion of such concentrations shall apply more than five (5) years after the effective date of the order to which Section 14.01(1) of the regulation refers or the plan to which Section 14.01(2) 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.

Section 15. Procedures for Exemptions From Specific Sections of This Regulation.

15.01. A non-profit health or non-profit educational institution proposed to construct, modify, or relocate a major stationary source or major modification may petition the Director for an exemption from the requirements of Sections 8 through 12 of this regulation.

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

15.03. 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 Sections 8 through 12 of this regulation. The Director may grant this exemption if the following conditions are met:

(1) The source proposes to relocate and emissions of the source at the new location would not exceed six (6) months; and

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

(3) 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) 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.

15.04. Any person proposing to construct, modify, or relocate a major stationary source or major modification may petition the Director for an exemption from the requirements of Sections 8 through 12 of this regulation with respect to a particular pollutant, 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 six (6) months and impact no Class I area and no area where an applicable increment is known to be violated.

15.05. Any person proposing to modify a major stationary source that was in existence prior to March 1, 1978 may petition the Director for an exemption from the requirements of Sections 8, 9, and 11 of this regulation with respect to a particular pollutant, if the net increase in allowable emissions of each pollutant for which the Commission has promulgated an emission or air quality standard from the modification after the application of best available control technology would be less than 50 tons per year.

15.06. Any person proposing to construct, modify, or relocate a major stationary source or major modification may petition the Director for an exemption from the requirements of Section 10.05 of this regulation with respect to a particular pollutant if:

(1) 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; or

(2) 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; or

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

15.07. Any person proposing to construct, modify, or relocate a major stationary source or major modification of volatile organic compounds may petition the Director for an exemption from the requirements of Section 10.05 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) 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) 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
- Sulfur Dioxide - 13 ug/m³, 24-hour average
- Ozone - no minimum air quality value
- Lead - 0.1 ug/m³, 24-hour average
- Mercury - 0.25 ug/m³, 24-hour average
- Beryllium - 0.0005 ug/m³, 24-hour average
- Fluorides - 0.25 ug/m³, 24-hour average
- Vinyl Chloride - 15 ug/m³, 24-hour average
- Total Reduced Sulfur - 10 ug/m³, 1-hour average
- Hydrogen Sulfide - 0.04 ug/m³, 1-hour average
- Reduced Sulfur Compounds - 10 ug/m³, 1-hour average

Section 16. Public Review Procedures.

- 16.01. 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.
- 16.02. The Director shall make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.
- 16.03. 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 startup 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 hearing as well as written public comment. The public comment period of thirty (30) days or longer will be stated in this notice.
- 16.04. The Director shall send a copy of the notice of public comment 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.

- 16.05. The Director shall provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.
- 16.06. Public comments submitted within thirty (30) days (or longer if stated in the notice of public comment) after the Director's public notification of an opportunity for comment upon a proposed construction, modification, 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.
- 16.07. The Director shall make a final determination whether construction should be approved, approved with conditions, or disapproved.
- 16.08. 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.

Section 17. Public Meetings.

- 17.01. Public meetings to receive comments on direct and/or indirect 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 source or modification.
- 17.02. 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 source or modification.
- 17.03. 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.

Section 18. Permit Transfer, Cancellation, and Responsibility.

- 18.01. A permit shall not be transferable.
- 18.02. The Director will cancel or suspend a permit if, after six (6) 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.
- 18.03. 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.
- 18.04. 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 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.

Section 19. Conflict With Other Rules or Regulations.

19.01. When applying or enforcing this regulation, if a provision of this regulation conflicts with a similar portion(s) of any rule or regulation previously adopted by the Commission, the provision(s) of this regulation shall apply.

Section 20. Effective Date.

20.01. Regulation XIV shall become effective on _____.

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Regulation XIV (1983) as adopted on the _____ day of _____, 1983.

Carl G. Beard, II
Secretary
West Virginia Air Pollution
Control Commission