STATE OF WEST VIRGINIA

OFFICE OF THE SECRETARY OF STATE

CHARLESTON 25305

A. 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;

(x) proposed rules and regulations superseding rules and regulations already on file;

( ) notice of hearing;

( ) findings and determinations;

( ) rules and regulations; or

( ) other - specify ( ).

FILED IN THE OFFICE OF SECRETARY OF STATE OF WEST VIRGINIA
THIS DATE 2-1-80

This filing pertains to

Chapter 16
Article 20
Series XIX
Section
Page No.

( ) proposed rules and regulations are required to go to Legislative Rule Making Committee;

(x) proposed rules and regulations are excluded from Legislative Rule Making Committee;

February 1, 1980
Date Submitted

Signature of Person Authorizing this Filing

WEST VIRGINIA
AIR POLLUTION CONTROL COMMISSION
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CHARLESTON, WEST VIRGINIA 25311
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MEMORANDUM

TO: The Honorable A. James Manchin
Secretary of State

FROM: Carl G. Beard, II
Secretary of Air Pollution Control Commission

DATE: February 1, 1980

SUBJECT: Statement of Facts and Circumstances Constituting the Temporary Regulation XIX-T "Requirements for Preconstruction Review, Determination of Emission Offsets for New or Modified Stationary Sources of Air Pollutants

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This temporary regulation establishes a new method to control air pollution from new sources in nonattainment areas. It is modeled after U. S. EPA regulations.

The regulation also includes a "bubble concept" approved which allows a company to apply more restrictive control to some types of sources and less control to others, based on economics, etc.

This regulation will aid in economic growth while providing for the control of air pollution in nonattainment areas. It will also allow some differentiation between control technology based on economics. The West Virginia State Implementation Plan now filed with U. S. EPA must include an offset regulation to be approved by U. S. EPA. The State of West Virginia must have an approvable State Implementation Plan or certain growth will be prohibited and other sanctions will be applied by U. S. EPA.

Public hearings have been held on the permanent regulation but not yet adopted.

Carl G. Beard, II
Secretary
Air Pollution Control Commission

CGB:ch

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Air Pollution Control Commission

Chapter 16-20
Series XIX
(1979)

Subject: Regulation XIX - Requirements for Preconstruction Review, Determination of Emission Offsets for New or Modified Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

Section 1. Intent and Purpose.

1.01. Emission Offsets

It is the intent of the Commission that all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, must adequately meet the preconstruction review procedures and conditions of the Clean Air Act Amendments of 1977 as set forth by the United States Environmental Protection Agency.

These conditions are designed to insure that the new (or modified) source's emissions will be controlled to the greatest degree possible; that more than equivalent offsetting emission reductions ("emission offsets")

will be obtained from existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

1.02. Bubble Concept

It is the intent of the Commission to extend to the owners or operators of existing sources of air pollutants located within nonattainment areas or Regions the option of proposing alternative emission reduction plans employing a more economically efficient mix of control technology.

This alternative emission reduction concept, called the "Bubble Concept," permits the owners or operators of sources to place a greater burden of control on facilities where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be, and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or delay compliance with the applicable regulations, or any requirements of ~~the West Virginia Air Pollution Control Act~~ Chapter 16, Article 20 of the Code of West Virginia, of 1931, as amended, or the Federal Clean Air Act, as amended, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

Section 2. Definitions.

2.01. "Applicable Regulations", shall mean the West Virginia Administrative Regulations of the Air Pollution Control Commission as promulgated pursuant to Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended.

2.02. "Applicant", shall mean any person who makes application to this Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of these regulations.

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

2.04. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:

Region I - made up of the counties of Brooke, Hancock, Marshall, and Ohio;

Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;

Region III - made up of the counties of Cabell, Mason and Wayne;

Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;

Region V - made up of the counties of Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welton Magisterial Districts of Mineral County.

Region X - made up of the counties of Berkeley, Jefferson and Morgan.

2.05. "Baseline", shall mean the limitation of emissions of a source, as determined by the applicable regulations in effect at the time the application to construct or modify a source is filed and is more fully defined in Section 7 herein.

2.06. "Commission", shall mean the West Virginia Air Pollution Control Commission.

2.07. "Director", shall mean the Director of the West Virginia Air Pollution Control Commission.

2.08. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are well defined and quantifiable activities related to such source or facility.

2.09. "Facility", shall mean an identifiable piece of process equipment. A stationary source is composed of one or more pollutant emitting facilities.

2.10. "Fixed Capital Cost", shall mean the capital needed to provide all the depreciable components.

2.11. "Fugitive Dust", shall mean particulate emissions composed of soil which is uncontaminated by pollutants resulting from industrial activity. Fugitive dust may include, but is not limited to:

(a) Emissions from haul roads;

(b) Wind erosion of exposed soil surfaces and soil storage piles; and

(c) Other activities in which soil is either removed, stored, transported, or redistributed.

2.12. "Intrapollutant Emission Offsets", shall mean that emission offsets may only be achieved for the same category of pollutant (e.g., hydrocarbon increases may not be offset against SO_2 reductions or coke plant particulate matter may not be offset against boiler flyash).

2.13. "Intrasource Pollutants", shall mean air pollutants emitted from within the same ~~plant~~ source which have the same physical and chemical characteristics and properties.

2.14. "Lowest Achievable Emission Rate (LAER)", shall mean, for any source, that rate of emissions based on the following, whichever is more stringent:

(a) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a modification, means the lowest achievable emission rate for the new or modified facilities within the source. In no event shall the application of this term permit a proposed new or modified facility to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

2.15. "Major Modification", shall mean any physical change in the method of operation of, or addition to a stationary source which increases the potential emission rate of any of the following pollutants by 100 tons or more per year: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, or carbon monoxide.

(a) A physical change shall not include routine maintenance, repairs, and replacement.

(b) A change in the method of operation, unless previously limited by enforceable permit conditions, shall not include:

(i) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) An increase in the hours of operation;

(iii) Use of an alternative fuel or raw material, if on December 21, 1976, the source was capable of accommodating such fuel or material;

(iv) Use of an alternative fuel or raw material by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

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

(vi) Change in ownership of a source; or

(vii) Use of refuse derived fuel generated from municipal solid waste.

2.16. "Major Stationary Source", shall mean any source for which the potential emission rate is equal to or greater than 100 tons per year of any of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, or carbon monoxide.

2.17. "National Ambient Air Quality Standard (NAAQS)", shall mean the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria has been issued.

2.18. "Nonattainment Area", shall mean for the purpose of this regulation, designated areas of the State in which National Ambient Air Quality Standards for specific air pollutants are not being attained. These areas and the associated nonattaining pollutants are as follows:

NONATTAINMENT AREA	POLLUTANT
AQCR I	
Counties of Brooke, Hancock, Ohio, Marshall	Suspended Particulate Matter
Grant Magisterial District, Hancock County	Sulfur Dioxide
AQCR II	
Tygart Magisterial District, Wood County	Suspended Particulate Matter

AQCR IV	
Kanawha County and Valley Magisterial District, Fayette County	Suspended Particulate Matter
Entire AQCR IV	Volatile Organic Compounds
AQCR VI	
Union and Winfield Magisterial Districts West of Interstate 79, Marion County	Suspended Particulate Matter

2.19. "Offset", and "emission offset", shall mean an emission reduction of a given pollutant achieved at an existing source (or facility within such source) that allows for the emission of such given pollutant at a different proposed source (or facility within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility within such source), is greater, on a pounds per hour basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source(s) including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for

the emission of such given pollutant at a different facility within the same existing source.

2.20. "Person", shall mean any and all persons, natural or artificial, including any municipal, public or private corporation organized or existing under the law of this or any other state or country, and any firm, partnership or association of whatever nature.

2.21. "Reconstruction", shall be presumed to have taken place where the fixed capital cost of the new components exceed 50% of the fixed capital cost of a comparable entirely new facility.

2.22. "Resource Recovery Facility" shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50% of the heat input to be considered a resource recovery facility under this regulation.

2.23. "Secondary Emissions", shall mean emissions from new or existing sources which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself. Secondary emissions may include, but are not limited to:

(a) Emissions from vessels or trains coming to or from a refinery, terminal facility, etc.

(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a major source.

2.24. "Significant Impact", shall mean the impact that the emissions, from a proposed major stationary source to be located in an attainment or unclassified area, have in a designated nonattainment area as of the new source's start-up date.

The Commission shall determine, upon review of the results of an adequate demonstration submitted by the applicant, whether the significance of the impact will be in excess of the following levels (as of the new source start-up date):

	Averaging Time		
Pollutant	Annual	24-hour	3-hour
SO_2	1.0 ug/m^3	5 ug/m^3	25 ug/m^3
TSP	1.0 ug/m^3	5 ug/m^3	

2.25. "Source", shall mean any structure, building, facility, equipment, installation or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

2.26. "Temporary Source", 'sources of temporary emissions' shall mean, for a source located in a nonattainment area, that emissions occurring for a period of time less than two years would generally be considered temporary.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter Sixteen, Article Twenty, Section Two of the Code of West Virginia, 1931, as amended.

Section 3. Applicability.

3.01. This regulation shall apply to all proposed major stationary sources intending to locate in a designated nonattainment area and to all major modifications or reconstruction to such existing sources located in designated nonattainment areas. This regulation shall also apply to all proposed major stationary sources and to all major modifications or reconstruction to such sources located anywhere in the State whose emissions will cause a violation of a NAAQS of which would cause a significant impact on air quality in a designated nonattainment area.

3.02. The determination under this regulation of whether such a source will cause or significantly contribute to a violation of a NAAQS will be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

3.03. This regulation shall not apply to sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, resource recovery facilities utilizing municipal solid waste to provide more than 50% of the heat input for generating steam or electricity. However, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

Section 4. Conditions for a Permit Approval for Proposed Sources That Would Contribute to a Violation of a NAAQS.

4.01. (a) Upon determination by the Director that the emissions from a proposed new source or source modification, or reconstruction, located within a nonattainment area, or located elsewhere and having a significant impact on pollutant concentrations in a nonattainment area, as of the source's proposed start-up date, permit approval may be granted only if the new source agrees by consent order as provided in Chapter 16, Article 20, Section 5(17) of the Code, to meet the following conditions:

(1) The proposed source, ~~or~~ modification or reconstruction is required to meet the lowest achievable emission rate (LAER) for such sources;

(2) The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia are in compliance with all applicable emission limitations and standards of Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or any rule or regulation promulgated thereunder, or is in compliance with a compliance program which is judicially enforceable or contained in a court decree;

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed source, <u>modified or reconstructed,</u> (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets are acceptable;

(4) The emission offsets will provide a positive net air quality benefit in the affected nonattainment area.

(i) Fulfillment of Sub-Section 4.01 (a) (3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

<u>(ii) Upon entry of the Consent Order as provided in this section notice of such entry shall be given to the United States Environmental Protection Agency.</u>

(b) Upon determination of the Director that technological or economic limitations on the application of measurement methodology to a particular class of sources would make

the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall, by final order, determine an appropriate measurement methodology or design, operational or equipment standard.

Section 5. Conditions for Permit Approval for Sources Locating in Attainment or Unclassifiable Areas That May Cause a New Violation of a NAAQS.

5.01. Upon determination by the Director that the emissions from a proposed source, modified or reconstructed, may cause a new violation of a NAAQS, permit approval may be granted only if the new source agrees by consent order as provided in Chapter 16, Article 20, Section 5(17) of the Code, to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intra-pollutant emission offsets are acceptable.

Section 6. Exemptions from Certain Conditions.

6.01. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (3) and (4), and Section 5.01:

(1) Resource recovery facilities burning municipal solid waste; and

(2) Sources which must switch fuels:

(i) due to lack of adequate fuel supplies; or

(ii) where a source is required to be modified as a result of future regulation and no exemption from such regulations is available to the source.

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (3) and (4) and Section 5.01, and that such efforts were unsuccessful; and

(2) The applicant has secured all available emission offsets; and

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available.

Section 7. Baseline for Determining Credit for Emission Offsets.

7.01. (a) The baseline for determining credit for emission

offsets will be the applicable regulation emission limitations in effect at the time the application to construct or modify a source is filed.

(b) Emission offsets shall be made on a pounds per hour basis when all facilities involved in the emission offset calculations are operating at their maximum expected or allowable production rate.

(c) The Director may specify other averaging periods, such as tons per year, in addition to the pounds per hour basis if necessary to carry out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

(d) Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.

7.03. Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

7.04. (a) The emissions for determining emission credit involving an existing fuel combustion source will be the allowable emissions under the applicable regulation for the type of fuel being burned at the time the new source application is filed.

(b) No emission offset credit shall be allowed for emission reductions (either actual or allowable) resulting from a switch by an existing source to a different type of fuel prior to the date the new source application is filed.

(c) No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission

reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate longterm supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.05. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be embodied in a consent order as provided in Chapter 16, Article 20, Section 5(17) of the Code.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity,

except for the following compounds: methane, ethane, 1, 1, 1 - Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

Section 8. Location of Offsetting Emissions.

8.01. Offsets shall be obtained from sources located as close to the proposed new, ~~or~~ modified or reconstructed source site as possible.

8.02. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed new, ~~or~~ modified or reconstructed source provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) shall be obtained from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new, modified or reconstructed source location;

(2) Emission offsets for sources of sulfur dioxide (SO_2), and total suspended particulate (TSP), should be obtained from an existing

facility on the same premises or in the immediate vicinity of the new or modified source.

(b) If such allowance is granted, the Commission shall increase the ratio of the required offsets for such a source.

(c) In order to ensure that the emission offsets will provide a positive net air quality benefit, the Director may, at his option, perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO_2) and total suspended particulate (TSP), the source's allowable emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality benefit. It may, however, be assumed that if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height,

the air quality test of Sub-Section 4.01 (a) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same site, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

(3) (a) Sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of Section 4 of this regulation.

(b) VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A VOC source may be exempt from these requirements if the source owner

can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone.

(i) This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO_x to form additional ozone.

Section 9. Administrative Procedures for Emission Offset Proposals.

9.01. Emission offsets may be proposed either by the owner of the proposed new, modified or reconstructed sources or by the local community or the State.

(a) The emission offsets committed to must be accomplished by the ~~new~~ said source~~s~~'s' start-up date, except when the new, modified or reconstructed facility is a replacement for a facility that is being shut down in order to provide the necessary benefits; in such cases the Director may allow up to 180 days for shakedown of the new facility before the existing facility is required to cease operation. Such allowance must be requested by the applicant and contained, if granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed modified or reconstructed source located in West Virginia, the offsets committed to must be embodied in a consent order as provided in Chapter 16, Article 20, Section 5(17) of the Code and must also be enforceable by both State agencies and the U. S. Environmental Protection Agency in accordance with the Clean Air Act as amended August 7, 1977.

9.02. (a) ~~A~~ Such source may propose emission offsets which involve:

(1) Reductions from sources controlled by the source owner (or by persons under common control).

(2) Reductions from neighboring sources not controlled by the applicant.

(b) A state or local community which desires that a new, modified or reconstructed source locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of ~~the new~~ such new, modified or reconstructed source.

9.03. Any emission offset proposal described in Section 9.02 above must be enforceable in ~~accordance with the provisions of Section 9.01 (b)~~ the same manner as offsets governed by the provisions of Section 9.01 (b).

Section 10. Banking of Emission Offset Credit.

10.01. New, modified or reconstructed sources obtaining permits after January 16, 1979, by applying offsets that exceed the requirements herein are permitted to save ("bank") such offset credit for up to two (2) years to provide offsets for a source seeking a permit in the future under the requirements of this regulation.

10.02. (a) The owner of an existing source that reduces its own emissions is permitted to save ("bank") any resulting reductions beyond those required by the applicable regulations for use under this regulation.

(b) These banked offsets may only be used as offset credit by the applicant in a subsequent application filed within a period of two (2) years from the date the offsets were acquired.

(c) Emission reductions from a source shutdown or permanent curtailment may be banked for use in a subsequent application by the source owner or transferee of offset for a period of two (2) years after said shutdown or curtailment for the expressed purpose of construction and operation of a specific major new, ~~or~~ modified or reconstructed source or sources, provided that the requirements of Sub-Section 7.05 (c) are met. Such source shall be identified in a petition to the Commission

and shall include a schedule for timely construction or modification and operation of said source(s).

10.03. Emission reductions not banked or which are not used as offset credit within the specified time will be credited to the State's additional growth allowance.

10.04. To preserve banked emission reductions (offsets), the Director shall identify them in a registry and identify the person, private entity, or governmental authority that has the right to use or allocate the banked emission reductions, and will record any transfers of, or sale of, such banked emission reductions.

Section 11. Control of Fugitive Dust.

11.01. Fugitive dust associated with major new, modified or reconstructed sources locating ~~in clean portions of non-attainment areas or~~ in attainment or unclassified areas shall be subject to control measures utilizing the best available control technology.

11.02. Fugitive dust associated with major same sources locating in an actual nonattainment area which are not exempt as a temporary source, shall be subject to conditions 1, 2 and 3 of Sub-Section 4.01 (a).

Section 12. Offsetting of Secondary Emissions.

12.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the major same source is subject to this regulation's conditions on the basis of direct emission of that same pollutant.

12.02. For the purposes of this regulation, secondary emissions must be specific and well-defined, must be quantifiable, and must impact the same general non-attainment area as the major same source which causes the secondary emissions.

12.03. Secondary emissions need not be considered in determining whether the significant impact levels in Section 2.20 would be exceeded.

12.04. (a) For the following pollutants, the determination of whether, in the actual area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO_2), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02 (d).

(2) For volatile organic compound (VOC) emissions, the area of impact would be the areas designated as nonattainment for ozone or as otherwise shown to be in violation of the NAAQS for ozone.

(b) If the source owner and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the source owner has the burden of proving it is correct by performing the necessary modeling.

Section 13. Bubble Concept for Intrasource Pollutants.

13.01. The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of control technology than that mandated by existing or proposed regulations.

13.02. It is the responsibility of the owner of the source to develop its specific bubble concept design. The owner also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards.

13.03. The Commission shall not approve any bubble concept design without first giving due notice and holding a public hearing, on a case-by-case basis.

13.04. An approved bubble concept design shall be in effect for any source for a period of no more than three years from the date of issuance. At the end of such three-year period, the Commission shall review the bubble concept design for such source and may

either terminate or extend approval of the design based on consideration of air quality, control technology innovation, and such other determinations as the Commission deems appropriate.

Section 14. Discretionary Decisions Made by the Director.

14.01. Any discretionary decision made by the Director as provided herein may be appealed to the Commission for their review by petition. Such review shall be discretionary with the Commission.

Section 15. Conflict with Other Rules or Regulations.

15.01. When 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 16. Effective Date.

16.01. Regulation XIX shall become effective ~~July 26, 1979~~ _____.

~~The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission Temporary Regulation XIX adopted on the 11th day of July, 1979.~~

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