# WEST VIRGINIA
# SECRETARY OF STATE
## NATALIE E. TENNANT
# ADMINISTRATIVE LAW DIVISION

Form #3

**Do Not Mark In This Box**

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2010 JUL 28 PM 12: 06

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: WV Department of Environmental Protection - Division of Air Quality TITLE NUMBER: 45

CITE AUTHORITY: W. Va. Code §22-5-4

AMENDMENT TO AN EXISTING RULE: YES X NO ____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR19

TITLE OF RULE BEING AMENDED: Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

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

Authorized Signature

## QUESTIONNAIRE

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 28, 2010

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) West Virginia Department of Environmental Protection
Division of Air Quality
601 57th Street, S.E.
Charleston, West Virginia 25304

LEGISLATIVE RULE TITLE: 45CSR19 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment

1. Authorizing statute(s) citation W. Va. Code §22-5-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 9, 2010

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

Public Notice placed on Department of Environmental Protection's web site, distributed via the agency's mailing list, and in a Class I legal ad published in the Charleston Newspapers.

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

Public Hearing/Comment Period Ended - July 12, 2010 (close of hearing)

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2010

f. **Name, title, address and <u>phone/fax/e-mail numbers</u>** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John A. Benedict, Director
601 57th Street, S.E.
Charleston, WV 25304
Phone: (304) 926-0499 ext. 1966
Fax: (304) 926-0488
John.A.Benedict@wv.gov

g. **<u>IF DIFFERENT</u> FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

# DEPARTMENT OF ENVIRONMENTAL PROTECTION
# DIVISION OF AIR QUALITY

## BRIEFING DOCUMENT

**Rule Title:** 45CSR19 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment"

**A. AUTHORITY:** W.Va. Code §22-5-4

**B. SUMMARY OF RULE:**

This rule establishes a state construction permit program consistent with the federal Clean Air Act's Title I program and implementing regulations at 40 CFR §51.165, "Permit Requirements." 45CSR19 is part of the State Implementation Plan and sets forth the criteria and procedures for major stationary sources to obtain a permit to construct, operate and/or modify a major source located in a nonattainment area or impacting a nonattainment area.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

As required by 40 CFR Part 51, Subpart I - "Review of New Sources and Modifications," this rule adopts criteria and procedures, consistent with the governing federal regulation at 40 CFR §51.165, for permitting construction of major new or modified sources locating in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, while ensuring that the source's emissions will be controlled to the greatest degree possible, and that there will be progress toward achievement of National Ambient Air Quality Standards. Promulgation of this rule by the Legislature is necessary for the State to fulfill its responsibilities under 40 CFR Part 51 and the CAA, as amended.

Revisions to the rule include a new subsection 1.5, which provides that references to the federal counterpart will be construed as the version which was in effect as of June 1, 2010. Also, the term "affected facilities" has been clarified. Other minor revisions ensure consistency with federal counterpart language. The DAQ will submit final rule 45CSR19 as a revision to the State Implementation Plan.

## D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

A federal counterpart to this proposed rule exists. Because proposed revisions make the rule conform to the federal counterpart rule, no determination of stringency is required.

## E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with W.Va. Code §§22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

## F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its June 3, 2010 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. (See attached minutes for Council's discussion).

# ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

## MEETING MINUTES
**June 3, 2010**

## I. CALL TO ORDER

**Kristin A. Boggs, Ex Officio Chair designated by Secretary Randy Huffman,** called to order a special meeting of the DEP Advisory Council at 1:40 p.m. on June 3 2010 at the headquarters of the West Virginia Department of Environmental Protection, 601 57th Street Southeast, Charleston, West Virginia. Agendas were distributed.

## II. ROLL CALL

Members present: Lisa Dooley, Jackie Hallinan, Larry Harris, Karen Price, Bill Raney, and Rick Roberts.

The meeting was also attended by the following DEP personnel: Randy C. Huffman, DEP Cabinet Secretary; Lisa McClung, DEP Deputy Cabinet Secretary; Kathy Cosco, DEP Chief Communication Officer; Daniel T. Arnold, Division of Water and Waste Management; Bill Timmermeyer, Division of Water and Waste Management; Charles Sturey, Division of Mining and Reclamation; Dave Vandelinde, Division of Mining and Reclamation, Office of Explosives and Blasting; Yvonne Anderson, Division of Mining and Reclamation; Ken Holliday, Division of Water and Waste Management; Yogesh Patel, Division of Water and Waste Management; Fred Durham, Division of Air Quality; Jim Mason, Division of Air Quality; Lewis Halstead, Division of Mining and Reclamation.

Also in attendance were: Don Garvin of the Ohio Valley Environmental Coalition; Katherine Crockett and Emily Moy of Spilman Thomas & Battle; and Lewis Baker of the West Virginia Rural Water Association.

## III. OLD BUSINESS

**Minutes of the May 27, 2010 Meeting.** The minutes were emailed and provided to Council in hard copy. Ms. Dooley moved for approval of the minutes, Mr. Raney seconded the motion, and it was carried by acclamation of Council.

## IV. PROPOSED 2011 LEGISLATIVE RULES

Because the Advisory Council had received summaries of the rule two weeks prior to the meeting, he suggested that Ms. Boggs simply read the title of the rule and allow Council members to ask questions, rather than read the summaries to Council. The suggestion was well taken. Summaries of the proposed rules are set forth herein for completeness of the record, and so the minutes will reflect the complete information provided to Council.

**Division of Air Quality**

- 45 C.S.R. 8 – *Ambient Air Quality Standards.* Promulgated last in the 2010 Session. Revisions to the rule include a change in format to incorporation by reference, rather than reiterating the NAAQS in the rule. The rule now incorporates by reference the NAAQS promulgated by EPA under 40 C.F.R. § 50 and the ambient air monitoring reference methods and equivalent methods under 40 C.F.R. § 53, which become effective June 1, 2010. EPA has established a new primary one-hour $NO_2$ standard at a level of 100 parts per billion, based on the three-year average of the 98th percentile of the yearly distribution of one-hour daily maximum concentrations, to supplement the existing primary annual standard of 53 parts per million. This new $NO_2$ primary standard is incorporated by reference in this rule.

  Section 2, titled *Anti-Degredation Policy*, has been stricken for two reasons. First, the new incorporation by reference format incorporates the federal significant deterioration of air quality provisions under 40 C.F.R. § 50.2(c). Second, because West Virginia adopted the federal Prevention of Significant Deterioration program under 45 C.S.R. 14 in the early 1980s, the State has more than satisfied the intent of the relic language in Section 2 to protect the air quality in areas that were in attainment of the NAAQS. Section 2 was authored in the early 1970s as a placeholder in anticipation of the future PSD program and its provisions for best available control technology.

- ~~45 C.S.R. 14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration.*~~ Promulgated last in the 2010 Session. Revisions to the rule include deletion of federally stayed provisions for fugitive emissions and clarification of affected facilities at large coal prep plants. EPA is now reconsidering inclusion of fugitive emissions and will issue a final rule in the future. Fugitive emissions from stockpiles (now an affected source under 40 C.F.R. § 60, Subpart Y) are now counted for large coal prep plants (but haul roads are still excluded). Other minor revisions ensure consistency with federal counterpart language.

- 45 C.S.R. 16 – *Standards of Performance for New Stationary Sources.* Promulgated last in the 2010 Session. Revisions to this rule are the annual incorporate-by-reference amendments to the NSPS, including Standards of Performance for Coal Preparation and Processing Plants. These final amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment located at coal preparation and processing plants.

- 45 C.S.R. 18 – *Combustion of Solid Waste.* Promulgated last in the 2008 Session. Revisions to the rule include new federal emission guidelines for existing hospital/medical/infectious waste incinerators (HMIWI). The revised rule has been restructured to better comport to respective federal counterpart language. The stricken provisions in Section 12, *Compliance Dates*, have been moved to respective sections for existing HMIWI and commercial and industrial solid waste incinerators. The revisions

strike obsolete language regarding repealed provisions, as well as add new definitions to the rule. Other miscellaneous revisions are included that improve the clarity and accuracy of existing rule language.

- 45 C.S.R. 19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment*. Promulgated last in the 2010 Session. Revisions to the rule include a new subsection 1.5, which provides that references to the federal counterpart will be construed as the version that was in effect as of June 1, 2010. Also, the term "affected facilities" has been clarified. Fugitive emissions from stockpiles (now an affected facility under 40 C.F.R. § 60, Subpart Y) are now counted for large coal prep plants (but haul roads are still excluded). Other minor revisions ensure consistency with federal counterpart language to date.

- 45 C.S.R. 25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities*. Promulgated last in the 2010 Session. Revisions to the rule include annual incorporation-by-reference updates. Definitions that are not used in the rule have been stricken and requirements pertaining to ignitable, reactive or incompatible wastes have been updated to reference a federal counterpart. The fee schedule for hazardous waste management facilities ahs been simplified.

- 45 C.S.R. 34 – *Emission Standards for Hazardous Air Pollutants*. Promulgated last in the 2010 Session. Revisions to this rule include the annual incorporation-by-reference revisions to the Hazardous Air Pollutant rule that include the following source categories of new or revised NESHAP standards promulgated as of June 1, 2010 for non-major area sources: Chemical Manufacturing Area Sources. The revised rule also incorporates by reference the following source categories of new or revised NESHAP standards promulgated as of June 1, 2010 for major sources: Petroleum Refineries and Reciprocating Internal Combustion Engines.

- The following source categories of newly promulgated NESHAPS affecting non-major area sources of hazardous air pollutants are being excluded from incorporation by reference: Prepared Feeds Manufacturing; Aluminum, Copper, and Other Non-Ferrous Foundries; Asphalt Processing and Asphalt Roofing Manufacturing, Paints and Allied Products Manufacturing; and Chemical Preparations Industry. EPA has not provided any additional funding to implement these new federal area source air toxics rules. Further, DAQ considers these standards to be resource-intensive and costly to implement as a practical matter, without achieving commensurate air quality benefits. For these reasons, West Virginia is one of Several States in Region III that are adopting some, but not all, of these standards. EPA Regional Offices will be implementing those standards not adopted by the States, thereby providing a measure of regulatory certainty and consistency.

**Division of Water & Waste Management**

- 33 C.S.R. 20 – *Hazardous Waste Management System*. Promulgated last in the 2010 Session. Revisions to this rule include striking "Expansion to RCRA Comparable Fuel Exclusion" from exclusion from incorporation by reference of the federal rule.

- 47 C.S.R. 12 – *Requirements Governing Groundwater Standards.* Promulgated last in the 2010 Session. The proposed revision to this rule is technical cleanup from last year's revision. Last year's amendment incorrectly set a numeric standard for radon, which the EPA proposed in draft language in 2009 but has not yet finalized. Therefore, West Virginia's adoption of a radon standard for groundwater was premature.

- 47 C.S.R. 60 – *Monitoring Well Design Standards.* Promulgated last in the 2010 Session. Revisions to this rule are needed to correct requirements for documentation submittals to DEP. The current version requires reporting of all borehole abandonment, which is unenforceable and unnecessary. Revisions to this rule will require abandonment documentation for "high risk" boreholes and permanent monitoring wells, as was the original intention of the 2010 amendments recommended by the Monitoring Well Advisory Council.

**Secretary's Office**

- 60 C.S.R. 2 – *Rules on Freedom of Information Act Requests.* Promulgated last in 1997. Revisions to this rule include changing the fee structure for searching for and reproducing requested records to bring it in line with other State agencies by setting a flat search fee of $20.00 per hour (or a quarter fraction thereof) for a Division's time spent in locating, duplicating or compiling the requested records providing and a cost of $10.00 if the ~~information is produced on diskette, tape or other storage media.~~

**Division of Mining & Reclamation**

- 38 C.S.R. 2 – *West Virginia Surface Mining Reclamation Rule.* Promulgated last in the 2009 Session. In addition to the amendments discussed at the December 9, 2009 meeting, which are currently in effect as an Emergency Rule, the proposed revisions include the following: (1) Clarification of the format and information necessary for complete application submittal and clarification on the renewal process to take into account DEP's electronic filing processes; (2) Provision for advertisement of the application when it is technically complete, as opposed to administratively complete; (3) Provision for reopening of the public comment period; (4) Provision that pre-subsidence surveys shall be confidential and only used for evaluating damage relating to subsidence; (5) Clarification of when an operator is considered to be in compliance with applicable environmental performance standards; (6) Provision that the Secretary has the authority to initiate bond release in lieu of the permittee; (7) Clarification that bonding for a permit in inactive status shall remain in effect for the life of the operation; and (8) Provision that the Secretary shall provide email notice of the issuance of a show cause order to members of the public who have subscribed to the Secretary's email notification service and otherwise provide notice to any person whose Citizen Complaint has resulted in the issuance of any violation that led to the issuance of a show cause order.

❖ 199 C.S.R. 1 – *Surface Mining Blasting Rule*. Promulgated last in the 2008 Session Revisions to this rule include modifying the definitions of "other structure" and "structure" to provide for dams as defined in 38 C.S.R. 4 § 2.7 and to provide that those dams will be exempt from the maximum air blast and ground vibration standards of the rule.

## V. COMMENTS FROM COUNCIL

Ms. Dooley moved that Council recommend to the Secretary that the Air Quality rules contain language in their sections entitled "Inconsistency Between Rules" to read as follows: "In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule using sound scientific information." *See*, 45 C.S.R. 8 proposed § 4.1. Ms. Dooley pointed out that DEP uses this language in some of its other Divisions' rules and some states surrounding West Virginia also use this language or similar language. Mr. Raney seconded the motion and discussion ensued. Ms. Hallinan pointed out that the proposed language is vague and may cause *Daubert*-related problems for attorneys arguing before boards and the courts using these rules. A vote was taken, and Ms. Dooley's motion passed by a majority vote of Council; Ms. Hallinan voted no and Dr. Harris abstained.

Regarding 45 C.S.R. 8, Dr. Harris asked about removing the anti-degredation section. He expressed concern about how many areas of the State are in attainment and asked if West Virginia does not still need the policy in order to stay in attainment. He was also concerned that removing the specific reference to "anti-degredation" might lead the public to believe that DEP does not enforce any such policy anymore. Mr. Mason explained that the anti-degredation was meant as a placeholder back when the rule was originally promulgated in the 1970s until the states could get their own programs up and running. Because West Virginia adopted the federal Prevention of Significant Deterioration program under 45 C.S.R. 14 in the early 1980s, the State has more than satisfied the intent of the relic "anti-degredation" language in Section 2 to protect the air quality in areas that were in attainment of the NAAQS. "Prevention of significant deterioration" in Rule 14 means the same thing as "anti-degredation."

Regarding 45 C.S.R. 14, Dr. Harris inquired about the justification for the proposed changes to the rule. Mr. Mason explained why the rule is being amended and a discussion ensued about fugitive emissions.

In relation to 45 C.S.R. 25, Mr. Roberts asked how many hazardous waste treatment, storage, and disposal facilities are in West Virginia, and Mr. Mason advised Council that he would have to research those numbers and report back.

Finally, regarding 45 C.S.R. 34, Dr. Harris asked for a definition of "area sources" and whether the federal EPA would enforce those provisions. Mr. Mason explained what area sources are and that EPA will enforce those standards.

In relation to 33 C.S.R. 20, Ms. Dooley inquired whether hazardous waste fees were being changed, and Ms. Boggs explained that, while fees are regurgitated in this rule, the statutory authority to change the fees was set forth in the statute; there are no changes to the fee structure proposed in this rule.

Dr. Harris asked the record to reflect that the Groundwater Standards rule was not submitted by the deadline, so Council had not yet had an opportunity to review the text or a summary of the rule prior to the Council meeting. Mr. Timmermeyer was on hand and did answer questions regarding why the rule had to be promulgated this year.

Regarding 60 C.S.R. 2, Ms. Dooley inquired about the language "shall furnish copies," and Ms. Boggs explained that the language for § 7.2 is in the disjunctive: the agency shall furnish copies or advise the requester when he or she can come in and review documents or deny the request. Ms. Dooley then inquired about the new exemptions, and Ms. Boggs explained that the exemptions mirror the West Virginia Freedom of Information Act, which is set forth at W. Va. Code 29B-1-1 et seq., and the federal Freedom of Information Act. Finally, Ms. Dooley asked whether the proposed fee changes would be sufficient to cover the agency's costs in responding to FOIA requests, and Ms. Cosco affirmed that they would.

Finally, regarding 38 C.S.R. 2, Dr. Harris inquired about the provisions relating to the addition of a trust account as an approved form of bond. Specifically, he asked whether the proposed trust account would cover perpetual treatment. Mr. Clarke explained that the proposed trust account is intended to be another form of bonding, not be a replacement for the Special Reclamation Fund. Dr. Harris then inquired as to how the cost of perpetual treatment is calculated. Mr. Clarke explained that the federal Office of Surface Mining Reclamation & Enforcement (OSM) has developed a computer model that estimates cost by developing a formula based on a mechanism that allows treatment for 40 or more years.

## VI. COMMENTS FROM THE PUBLIC

Mr. Garvin asked for clarification on the trust account proposed by the Division of Mining and Reclamation. Mr. Clarke answered his questions.

Mr. Garvin then had several questions for Mr. Mason and Mr. Durham regarding the proposed Air Quality rules, which were duly answered.

## VII. ADJOURNMENT

Mr. Raney moved that the meeting be adjourned, Ms. Dooley seconded the motion, and it carried by acclamation of Council. The meeting was adjourned at 3:05 p.m.

APPENDIX B

# *FISCAL NOTE FOR PROPOSED RULES*

Rule Title: 45CSR19 – "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment"

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Division of Air Quality

Address: 601 57th Street SE

Charleston, WV 25304

Phone Number: (304)926-047 Email: tammy.l.mowrer@wv.gov

## Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact above that resulting from currently applicable federal emission standards.

## Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

**FISCAL YEAR**

| Effect of Proposal | 2011 Increase/Decrease (use "-") | 2012 Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
|---|---|---|---|
| **1. Estimated Total Cost** | $ 0 | $ 0 | $ 0 |
| Personal Services | 0 | 0 | 0 |
| Current Expenses | 0 | 0 | 0 |
| Repairs & Alterations | 0 | 0 | 0 |
| Assets | 0 | 0 | 0 |
| Equipment | 0 | 0 | 0 |
| Other | 0 | 0 | 0 |
| **2. Estimated Total Revenues** | 0 | 0 | 0 |

Rule Title: 45CSR19 –"Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment"

**3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Costs anticipated to be incurred by revision to this rule are included in prior cost estimates prepared for state implementation of Title V of the Clean Air Act, as amended, under 45CSR30. Full Title V program approval was issued by the U.S. Environmental Protection Agency on November 19, 2001.

## MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: June 9, 2010

John A. Benedict, Director

**TITLE 45**
**LEGISLATIVE RULE**
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**
**AIR QUALITY**

**SERIES 19**
**PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION WHICH CAUSE OR CONTRIBUTE TO NONATTAINMENT**

**§45-19-1. General.**

1.1. Scope.

1.1.a. It is the intent of the Secretary 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, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act as amended and this rule.

1.1.b. These conditions are designed to ensure that the major new or modified source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions 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 Secretary will be met.

1.2. Authority. – W. Va. Code §22-5-4.

1.3. Filing Date. – ~~April 30, 2010~~.

1.4. Effective Date. – ~~June 1, 2010~~.

1.5. Federal Regulation. – Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will, for the purpose of this rule, be construed as that version which was in effect as of June 1, 2010.

~~1.5.~~ 1.6. Former Rules. – This legislative rule amends 45CSR19 "Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants" which was filed ~~May 20, 2005~~ April 30, 2010 and became effective ~~June 1, 2005~~ June 1, 2010.

**§45-19-2. Definitions.**

2.1. "Actual Emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions 2.1.a through 2.1.c, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under section 23. Instead, subsections 2.59 and 2.9 shall apply for those purposes.

2.1.a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year,

at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The Secretary may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

2.1.b. The Secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

2.2. "Actuals PAL" for a major stationary source means a PAL based on the baseline actual emissions (as defined in subsection 2.9) of all emissions units (as defined in subsection 2.26) at the source, that emit or have the potential to emit the PAL pollutant.

2.3. "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

2.4. "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits, limits established by the Secretary pursuant to the Secretary's rules which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

2.4.a. The applicable standards set forth in 40 CFR Part 60 or 61;

2.4.b. The applicable State of West Virginia emissions limitations or permit conditions, including those with a future compliance date; or

2.4.c. The applicable federally enforceable emissions limitations or permit conditions, including those with a future compliance date.

2.5. "Applicable Regulations" means rules of the Secretary as promulgated pursuant to W. Va. Code §22-5-4, and regulations of the Environmental Protection Agency promulgated pursuant to the Clean Air Act.

2.6. "Applicant" means any person who makes application to the Secretary for a permit to construct, modify or relocate a source in West Virginia under the provisions of this rule.

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

2.8. "Air Pollution", or "statutory air pollution", has the meaning ascribed to it in W. Va. Code §22-5-2.

2.9. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

2.9.a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-

month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

2.9.a.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2.9.a.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

2.9.a.3. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.9.a.4. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph 2.9.a.2.

2.9.b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Secretary for a permit required under this rule, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

2.9.b.1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2.9.b.2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

2.9.b.3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of this chapter, the baseline actual emissions need only be adjusted if the State has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of subsection 8.6.

2.9.b.4. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

2.9.b.5. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount

if required by paragraphs 2.9.b.2 and 2.9.b.3.

2.9.c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

2.9.d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision 2.9.a, for other existing emissions units in accordance with the procedures contained in subdivision 2.9.b, and for a new emissions unit in accordance with the procedures contained in subdivision 2.9.c.

2.10. "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 operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

2.11. "Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the Secretary, 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 combustion 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 or 61. If the Secretary 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 BACT. 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.

2.12. "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) except the activities of any vessel. 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 (2)-digit code) as described in the Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number GPO 0-185-718:QL 3).

2.13. "CAA" means the Clean Air Act, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

2.14. "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November

15, 1990.

2.15. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

2.16. [Reserved.]

2.17. "Code" means principally W. Va. Code §22-5-1 et seq., and, where applicable, W. Va. Code §22-18-1 et seq.

2.18. "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:

2.18.a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2.18.b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

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

2.20. "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

2.21. "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

2.22. "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements , to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, $O_2$ or $CO_2$ concentrations), and to record average operational parameter value(s) on a continuous basis.

2.23. "Department of Environmental Protection" or "DEP" means the Department of Environmental Protection which is created by the provisions of West Virginia Code §22-1-1, et seq.

2.24. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the

affected facility.

2.25. "Emissions" refers to the release, escape, or discharge of air pollutants into the air.

2.26. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in subsection 2.24. For purposes of this rule, there are two types of emissions units as described in subdivisions 2.26.a and 2.26.b.

2.26.a. A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

2.26.b. An existing emissions unit is any emissions unit that does not meet the requirements in subdivision 2.26.a. A replacement unit, as defined in subsection 2.62, is an existing emissions unit.

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

2.28. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator including those requirements developed pursuant to 40 CFR Parts 60 and 61, rules and regulations of the approved State Implementation Plan of the State of West Virginia, any permit requirements established pursuant to 40 CFR §52.21 or this rule, and any operating permits issued under a USEPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.

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

2.30. "Intrapollutant Emission Offsets" means that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., VOC increases may not be offset against $SO_2$ reductions, or coke plant particulate matter may not be offset against boiler fly ash, or $NO_X$ may not be offset against VOC).

2.31. "Lowest achievable emission rate" or (LAER)" means, for any source, that rate of emissions based on the following, whichever is more stringent:

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

2.31.b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This term when applied to a new or modified emissions unit, means the lowest achievable emissions rate for such emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

2.32. "Major emissions unit" means:

2.32.a. Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

2.32.b. Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the CAA for nonattainment areas. For example, in accordance with the definition of major stationary source in §182(c) of the CAA, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

2.33. Major Modification.

2.33.a. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in:

2.33.a.1. A significant emissions increase of a regulated NSR pollutant (as defined in subsection 2.61.); and

2.33.a.2. A significant net emissions increase of that pollutant from the major stationary source.

2.33.b. Any significant emissions increase (as defined in subsection 2.67) from any emissions units or net emissions increase (as defined in subsection 2.39) at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

2.33.c. A physical change or change in the method of operation shall not include:

2.33.c.1. Routine maintenance, repair and replacement;

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

2.33.c.3. Use of an alternative fuel by reason of an order or rule under §125 of the CAA;

2.33.c.4. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

2.33.c.5. Use of an alternative fuel or raw material by a stationary source which:

2.33.c.5.A. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR §52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR §51.166, or

2.33.c.5.B. The source is approved to use under any permit issued under this rule;

2.33.c.6. An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR §52.21 or regulations approved pursuant to 40 CFR Part 51 subpart I or 40 CFR §51.166.

2.33.c.7. Any change in ownership at a stationary source.

2.33.c.8. [Reserved.]

2.33.c.9. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

2.33.c.9.A. The West Virginia State Implementation Plan, and

2.33.c.9.B. Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

2.33.d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under section 23 for a PAL for that pollutant. Instead, the definition at subsection 2.48 shall apply.

2.33.e. For the purpose of applying the requirements of subsection 17.6 to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Title I, Part D, Subpart 2 of the CAA, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

2.33.f. Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Title I, Part D, Subpart 2 of the CAA.

2.34. "Major Modification for Ozone" means a major modification for VOC and $NO_x$.

2.35. "Major Stationary Source" means:

2.35.a. Any stationary source of air pollutants which emits, or has the potential to emit 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to ozone nonattainment areas, carbon monoxide nonattainment areas, or particulate matter nonattainment areas, in accordance with the following:

2.35.a.1. 50 tons per year of volatile organic compounds in any serious ozone nonattainment area;

2.35.a.2. 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

2.35.a.3. 25 tons per year of volatile organic compounds in any severe ozone nonattainment area;

2.35.a.4. 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area;

2.35.a.5. 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator); and

2.35.a.6. 70 tons per year of $PM_{10}$ in any serious nonattainment area for $PM_{10}$;

2.35.b. For the purposes of applying the requirements of subsection 17.6 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the following emission thresholds shall apply in ozone nonattainment areas:

2.35.b.1. 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate;

2.35.b.2. 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region;

2.35.b.3. 100 tons per year or more of nitrogen oxides in any area designated under §107(d) of the CAA as attainment or unclassifiable for ozone that is located in an ozone transport region;

2.35.b.4. 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone;

2.35.b.5. 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone;

2.35.b.6. 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

2.35.c. Any physical change that would occur at a stationary source not qualifying under subdivisions 2.35.a and 2.35.b as a major stationary source, if the change would constitute a major stationary source by itself.

2.35.d. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

2.35.e. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this subsection whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

2.35.e.1. Coal cleaning plants (with thermal dryers);

2.35.e.2. Kraft pulp mills;

2.35.e.3. Portland cement plants;

2.35.e.4. Primary zinc smelters;

2.35.e.5. Iron and steel mills;

2.35.e.6. Primary aluminum ore reduction plants;

2.35.e.7. Primary copper smelters;

2.35.e.8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

2.35.e.9. Hydrofluoric, sulfuric, or nitric acid plants;

2.35.e.10. Petroleum refineries;

2.35.e.11. Lime plants;

2.35.e.12. Phosphate rock processing plants;

2.35.e.13. Coke oven batteries;

2.35.e.14. Sulfur recovery plants;

2.35.e.15. Carbon black plants (furnace process);

2.35.e.16. Primary lead smelters;

2.35.e.17. Fuel conversion plants;

2.35.e.18. Sintering plants;

2.35.e.19. Secondary metal production plants;

2.35.e.20. Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

2.35.e.21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

2.35.e.22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

2.35.e.23. Taconite ore processing plants;

2.35.e.24. Glass fiber processing plants;

2.35.e.25. Charcoal production plants;

2.35.e.26. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

2.35.e.27. Any other stationary source category which, as of August 7, 1980, is being regulated under §111 or 112 of the CAA.

2.35.f. In addition to those facilities covered under subdivision 2.35.e, all coal preparation plants as defined under 40 CFR §60.251(a) which process more than 200 tons per day shall count ~~fugitives~~ fugitive

emissions from all "affected facilities" at the source~~, i.e., from all thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems~~.

2.35.g. For the purpose of subdivision 2.35.f, the term "affected facilities" means those facilities which are listed or identified as "affected facilities" in the applicable standard promulgated under §§111 or 112 of the CAA."

2.36. "Major Stationary Source for Ozone" means a major stationary source of VOC or $NO_x$.

2.37. "National Ambient Air Quality Standard (NAAQS)" means the numerical standard specified by the United States Environmental Protection Agency for each air pollutant for which air quality criteria have been issued.

2.38. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws or regulations and air quality control laws and regulations of the State of West Virginia. Where a consent order is required to be submitted to the USEPA for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the Administrator approves such consent order for inclusion in the State Implementation Plan.

2.39. "Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

2.39.a. Any increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to subsection 3.4.; and

2.39.b. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in subsection 2.9, except that paragraphs 2.9.a.3 and 2.9.b.4 shall not apply.

2.39.b.1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

2.39.b.2. An increase or decrease in actual emissions is creditable only if:

2.39.b.2.A. It occurs within a reasonable period to be specified by the Secretary; and

2.39.b.2.B. The Secretary has not relied on the increase or decrease in issuing a permit for the source under section 14, which permit is in effect when the increase in actual emissions from the particular change occurs; and

2.39.b.3. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

2.39.b.4. A decrease in actual emissions is creditable only to the extent that:

2.39.b.4.A. The old level of actual emission or the old level of allowable emissions whichever

is lower, exceeds the new level of actual emissions;

2.39.b.4.B. It is federally enforceable and enforceable by the Secretary as a practical matter at and after the time that actual construction on the particular change begins; and

2.39.b.4.C. The Secretary has not relied on it in issuing any permit under this rule, in demonstrating attainment of the NAAQS, or in a demonstration of reasonable further progress; and

2.39.b.4.D. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

2.39.b.5. 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 new unit that replaces an existing unit and requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

2.39.c. Subdivision 2.1.a shall not apply for determining creditable increases and decreases or after a change.

2.40. "Nonattainment Area" means for the purpose of this rule, those areas designated in accordance with §107 of the CAA as not having attained NAAQS for specific air pollutants. Nonattainment areas for ozone, carbon monoxide, and $PM_{10}$ are divided into categories, which may have different major source size definitions and offset ratio requirements than in previous regulations. These categories are as follows:

2.40.a. Ozone nonattainment areas may be designated as Marginal, Moderate, Serious, Severe, or Extreme.

2.40.b. Carbon monoxide nonattainment areas may be designated as Moderate or Severe.

2.40.c. $PM_{10}$ nonattainment areas may be designated as Moderate or Severe.

2.41. "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the Administrator, or a program that implements 40 CFR Part 51, appendix S, sections I through VI. Any permit issued under such a program is a major NSR permit.

2.42. "Offset" or "emission offset" means an emission reduction of a given pollutant achieved at an existing source (or emissions unit within such source) that allows for the emission of such given pollutant at a different proposed source (or emissions unit within such proposed source); provided that the amount of reduction in emissions at the existing source (or emissions unit within such source), is greater, on a tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or emissions unit within such source) so that total emissions from the source including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term also means an emission reduction of a given pollutant achieved at a unit within an existing source that allows for the emission of such given pollutant at a different unit within the same existing source. In addition to the above requirement that offset ratios must be greater than one-to-one, the offset ratios in ozone nonattainment areas must equal or exceed:

2.42.a. In marginal ozone nonattainment areas, 1.1 to 1.

2.42.b. In moderate ozone nonattainment areas, 1.15 to 1.

2.42.c. In serious ozone nonattainment areas, 1.2 to 1.

2.42.d. In severe ozone nonattainment areas, 1.3 to 1.

2.42.e. In extreme ozone nonattainment areas, 1.5 to 1.

2.43. "Offset Ratio" means the ratio of total emission reductions to total emission increases, for any specific pollutant.

2.44. "$PM_{10}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method described in Appendix J of 40 CFR Part 50.

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

2.46. "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

2.47. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

2.48. "PAL major modification" means, notwithstanding subsections 2.33 and 2.39 (the definitions for major modification and net emissions increase), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

2.49. "PAL permit" means the major NSR permit, the minor NSR permit, or the title V permit issued by the Secretary that establishes a PAL for a major stationary source.

2.50. "PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

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

2.52. "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with subsections 23.1 through 23.15.

2.53. [Reserved.]

2.54. "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery,

treatment or disposal.

2.55. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or is enforceable by the Secretary in any permit or consent order issued by the Administrator or by the Secretary. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.56. "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, $O_2$ or $CO_2$ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

2.57. "Prevention of Significant Deterioration (PSD) permit" means any permit that is issued under the major source preconstruction permit program set forth in 45CSR14.

2.58. "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

2.59. "Projected actual emissions" means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions, before beginning actual construction, the owner or operator of the major stationary source:

2.59.a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the State or Federal regulatory authorities, and compliance plans under the approved plan;

2.59.b. Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

2.59.c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under subsection 2.9 and that are also unrelated to the particular project, including any increased utilization due to product demand growth~~; or~~.

2.59.d. In lieu of using the method set out in subdivisions 2.59.a through 2.59.c, may elect to use the emissions unit's potential to emit, in tons per year, as defined under subdivision 2.55.

2.60. "Reasonable Further Progress" means the annual reductions in emissions of pollutants in nonattainment areas as are required pursuant to Part D of the 1990 Clean Air Act Amendments or which are

required by the Secretary or the Administrator for the purpose of ensuring attainment of NAAQS by the applicable statutory deadline.

2.61. "Regulated NSR Pollutant" means the following:

2.61.a. Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

2.61.b. Nitrogen oxides or any volatile organic compounds;

2.61.c. Any pollutant that is identified under this subdivision as a constituent or precursor of a general pollutant listed under subdivisions 2.61.a or 2.61.b, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

2.61.c.1. Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

2.61.c.2. Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

2.61.c.3. Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the Secretary demonstrates to the Administrator's satisfaction or USEPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

2.61.c.4. Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the Secretary demonstrates to the Administrator's satisfaction or USEPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

2.61.d. $PM_{2.5}$ emissions and $PM_{10}$ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and $PM_{10}$ in nonattainment major NSR permits. Compliance with emissions limitations for $PM_{2.5}$ and $PM_{10}$ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

2.62. "Replacement unit" means an emissions unit for which all the criteria listed in subdivisions 2.62.a through 2.62.d are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

2.62.a. The emissions unit is a reconstructed unit within the meaning of 40 CFR §60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit;

2.62.b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit;

2.62.c. The replacement does not change the basic design parameter(s) of the process unit; and

2.62.d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

2.63. "Reviewing authority" means the Secretary of the Department of Environmental Protection.

2.64. "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. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include, but are not limited to emissions from any offsite 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 of major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, a train, or from a vessel.

2.65. "Secretary" means the Secretary of the Division of Environmental Protection or his or her designated representative.

2.66. "Significant" means, in reference to a net emissions 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 Pollutant Emission Rate (tons per year) | |
|---|---|
| Carbon monoxide: | 100 tpy |
| Nitrogen oxides: | 40 tpy |
| Sulfur dioxide: | 40 tpy |
| Ozone: | 40 tpy of VOC or $NO_x$ |
| Lead: | 0.6 tpy |
| $PM_{10}$: | 15 tpy |
| $PM_{2.5}$: | 10 tpy of direct $PM_{2.5}$ emissions |
| $PM_{2.5}$: | 40 tpy of $SO_2$ emissions |

| | |
|---|---|
| $PM_{2.5}$: | 40 tpy of $NO_x$ emissions |
| (unless demonstrated not to be a $PM_{2.5}$ precursor under subsection 2.61). | |

2.66.a. Notwithstanding the significant emissions rate for ozone in subsection 2.66, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Title I, Part D, Subpart 2 of the CAA, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

2.66.b. For the purposes of applying the requirements of subsection 17.6 to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in subsection 2.66, subdivisions 2.66.a and 2.66.d shall apply to nitrogen oxides emissions.

2.66.c. Notwithstanding the significant emissions rate for carbon monoxide under subsection 2.66, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

2.66.d. Notwithstanding the significant emissions rates for ozone under subsection 2.66 and subdivision 2.66.a, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Title I, Part D, Subpart 2 of the CAA shall be considered a significant net emissions increase.

2.67. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

2.68. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level, as defined in subsection 2.66 or the CAA, whichever is lower, for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

2.69. "Significant Impact" means an increase in the ambient air concentration for a particular pollutant as follows:

| Averaging time (hours) | | | | | |
|---|---|---|---|---|---|
| | Annual | 24 | 8 | 3 | 1 |
| Ambient Air Concentration Increase ($\mu g/m^3$) | | | | | |
| $SO_2$ | 1.0 | 5.0 | | 25.0 | |

| | | | | | |
|---|---|---|---|---|---|
| $PM_{10}$ | 1.0 | 5.0 | | | |
| $NO_2$ | 1.0 | | | | |
| TSP | 1.0 | 5.0 | | | |
| Ambient Air Concentration Increase ($mg/m^3$) | | | | | |
| CO | | | 0.5 | | 2.0 |

2.70. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in subsection 2.66 or the CAA, whichever is lower.

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

2.72. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State Implementation Plan for the State in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

2.73. "Temporary Source" or "sources of temporary emissions", means for a source located in a nonattainment area and subject to this rule, those emissions occurring for a period of time less than two years.

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

2.75. "USEPA" means the United States Environmental Protection Agency.

2.76. "Volatile organic compounds (VOC)" are as defined in 40 CFR §51.100(s).

2.77. Other words and phrases used in this rule, unless otherwise indicated, have the meaning ascribed to them in W. Va. Code §22-5-2.

**§45-19-3. Applicability.**

3.1. Preconstruction Permit Program In Nonattainment Areas. – The preconstruction permit program requirements apply to the construction of any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under 40 CFR Part 81, Subpart C if the stationary source or modification would locate anywhere in the designated nonattainment area.

3.2. Preconstruction Permit Program In Attainment Areas. – The preconstruction permit program requirements also apply to any proposed major stationary source and to any major modification to such source in an area designated as attainment or unclassifiable for any National Ambient Air Quality Standard (NAAQS) pursuant to section 107 of the CAA when it would cause or contribute to a violation of a NAAQS.

3.3. Significance levels.

3.3.a. A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when such source or modification would, at a minimum, exceed the significance levels set forth in Table 45-19B at any locality that does not or would not meet the applicable national standard.

3.3.b. A proposed major source or major modification subject to subsection 3.2 may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any NAAQS.

3.4. Determination of major modification. – The determination as to whether or not a proposed project is a major modification for a regulated NSR pollutant shall be determined in accordance with the specific provisions set forth in subdivisions 3.4.a through 3.4.f.

3.4.a. Except as otherwise provided in subsections 3.5 and 3.6, and consistent with the definition of major modification, a proposed project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases -- a significant emissions increase (as defined in subsection 2.67), and a significant net emissions increase (as defined in subsections 2.66 and 2.39). The proposed project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

3.4.b. The procedure for calculating, before beginning actual construction, whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3.4.c through 3.4.f. The procedure for calculating, before beginning actual construction, whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in subsection 2.39. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3.4.c. Actual-to-projected-actual applicability test for proposed projects that only involve existing emissions units. – A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions (as defined in subdivisions 2.9.a and 2.9.b, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

3.4.d. Actual-to-potential test for proposed projects that only involve construction of a new emissions unit(s). – A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the proposed project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

3.4.e. [Reserved.]

3.4.f. Hybrid test for projects that involve multiple types of emissions units. – A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3.4.c through 3.4.d as applicable with respect to

each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

3.5. For any major stationary source subject to a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under section 23.

3.6. [Reserved.]

3.7. Exemption.

3.7.a. A source or modification shall not be considered a major stationary source or major modification only if fugitive emission to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

3.7.a.1. Coal cleaning plants (with thermal dryers);

3.7.a.2. Kraft pulp mills;

3.7.a.3. Portland cement plants;

3.7.a.4. Primary zinc smelters;

3.7.a.5. Iron and steel mills;

3.7.a.6. Primary aluminum ore reduction plants;

3.7.a.7. Primary copper smelters;

3.7.a.8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

3.7.a.9. Hydrofluoric, sulfuric, or citric acid plants;

3.7.a.10. Petroleum refineries;

3.7.a.11. Lime plants;

3.7.a.12. Phosphate rock processing plants;

3.7.a.13. Coke oven batteries;

3.7.a.14. Sulfur recovery plants;

3.7.a.15. Carbon black plants (furnace process);

3.7.a.16. Primary lead smelters;

3.7.a.17. Fuel conversion plants;

3.7.a.18. Sintering plants;

3.7.a.19. Secondary metal production plants;

3.7.a.20. Chemical process plants – The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

3.7.a.21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

3.7.a.22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

3.7.a.23. Taconite ore processing plants;

3.7.a.24. Glass fiber processing plants;

3.7.a.25. Charcoal production plants;

3.7.a.26. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

3.7.a.27. Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the CAA.

3.7.b. In addition to the facilities covered under subdivision 3.7.a, all coal preparation plants as defined under 40 CFR §60.251(a) which process more than 200 tons per day shall count ~~fugitives~~ fugitive emissions from all "affected facilities" at the source~~, i.e., from all thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems~~.

3.7.c. For the purpose of subdivision 3.7.b, the term "affected facilities" means those facilities which are listed or identified as "affected facilities" in the applicable standard promulgated under §§111 or 112 of the CAA."

**§45-19-4. Conditions for a Permit Approval for Proposed Major Sources That Would Contribute to a Violation of NAAQS.**

4.1. Upon determination by the Secretary that a proposed new major stationary source or major modification will locate within a nonattainment area, or that a proposed new major stationary source or major modification to be built outside a nonattainment area will have a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved), to meet the following conditions:

4.1.a. The proposed major stationary source or major modification is required to meet the lowest achievable emission rate (LAER) for such source;

4.1.b. The applicant must certify that all existing 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 the CAA and W.Va. Code §22-5-4, or the applicable regulations, or is in compliance with a compliance program or a court decree which is federally enforceable and enforceable by the Secretary;

4.1.c. More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new major stationary source or major modification (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. For sources locating in ozone nonattainment areas, the offset ratios for VOC and $NO_x$ must equal or exceed those specified in subsection 2.42. Only intrapollutant emission offsets are acceptable; and

4.1.d. The emission offsets will provide a positive net air quality benefit in the affected nonattainment area. Atmospheric simulation modeling for ozone impacts is not necessary for VOC and $NO_x$. Compliance with subdivision 4.1.c and subsection 8.2 will be adequate to meet this condition.

4.2. Upon determination by the Secretary that technological or economic limitations on the application of measurement methodology to a particular source or class of sources would make the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the Secretary 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 Secretary, the Secretary shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

4.3. For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 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 the lowest achievable emission rate for the source.

4.4. Control Technology Information. – The Secretary shall, for each new major source and major modification, submit to the Administrator, within 60 days of issuance of the construction permit, all information on the emissions prevention or control technology for the new major source or major modification for the purpose of making such information available through the RACT/BACT/LAER clearinghouse to other states and to the general public.

4.5. Rocket Engines or Motors. – The Secretary may allow a source to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified source that tests rocket engines or motors under the following conditions:

4.5.a. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that was permitted to test such engines as of November 15, 1990;

4.5.b. The source demonstrates to the satisfaction of the Secretary that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source;

4.5.c. The source has obtained a written finding from the Department of Defense, Department of

Transportation, National Aeronautics and Space Administration or other appropriate Federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to national security; and

4.5.d. The source shall comply with an alternative measure, imposed by the Secretary, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the Secretary may impose any emissions fee which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous three (3) years. The Secretary shall utilize the fees in a manner that maximizes reductions in that area.

**§45-19-5. Conditions for Permit Approval for Sources Locating in Attainment or Unclassifiable Areas That Would Cause a New Violation of a NAAQS.**

5.1. Upon determination by the Secretary that the emissions from a proposed new major stationary source or major modification locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved) 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 intrapollutant emission offsets are acceptable.

5.2. If the proposed major source or major modification does not obtain the emission reductions specified in subsection 3.2 the Secretary shall deny the proposed construction.

5.3. The requirements of subsections 3.2 and 5.2 shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to section 107 of the CAA.

**§45-19-6. [Reserved.]**

**§45-19-7. Baseline for Determining Credit for Emission Offsets.**

7.1. For major stationary sources and major modifications subject to subsections 3.1 and 3.2 the baseline for determining credit for emissions reductions is the emission limit in effect at the time the application for a permit to construct under section 14 is filed, except that the offset baseline shall be the actual emissions of the source from which the offset credit is obtained where:

7.1.a. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or

7.1.b. 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.

7.2. 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.

7.3. For an existing fuel combustion source, credit shall be based on the allowable emissions for the

type of fuel being burned at the time the permit to construct application under section 14 is filed. If the existing source commits to switch to a cleaner fuel at some future date, emission offset credit based on the allowable or actual emissions for the fuels involved is not acceptable, unless the permit is conditioned to require use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches may be granted.

7.4. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the following requirements:

7.4.a. Such reductions are permanent, quantifiable, federally enforceable.

7.4.b. The shutdown or curtailment occurred on or after the date specified in the attainment plan, and if such date is on or after the date of the most recent emission inventory used in the attainment demonstration. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration shall apply. However, no may credit be given for shutdowns which occurred prior to August 7, 1977.

7.5. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subdivision 7.4.b may be generally credited only if:

7.5.a. The shutdown or curtailment occurred on or after the date the construction permit application is filed, or

7.5.b. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of subdivision 7.4.a.

7.6. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of USEPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

7.7. All emission reductions claimed as offset credit shall be federally enforceable.

**§45-19-8. Location of Emissions Offsets.**

8.1. Emissions offsets shall be obtained from sources located as close to the proposed major stationary or major modified source site as possible. Except for ozone nonattainment areas, these emissions offsets must be obtained from the same nonattainment area as the proposed major source or major modification.

8.2. The Secretary, by petition, may allow emissions offsets from sources located at greater distances from the proposed major stationary source or major modification 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 provisions:

8.2.a. Emission offsets for VOC or $NO_X$ will generally be acceptable from sources located within the

same ozone nonattainment area or from other ozone nonattainment areas of equal or higher classification which can be shown to cause or significantly contribute to the ozone problem at the proposed new or modified source location; and

8.2.b. Emission offsets for sources of sulfur dioxide ($SO_2$), and total suspended particulate (TSP), should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

8.3. If such allowance is granted, as provided for in subsection 8.2, the Secretary may increase the ratio of the required offsets for such source.

8.4. In order to ensure that the emission offsets will provide a positive net air quality benefit, the Secretary may perform the necessary analysis or require the applicant to submit appropriate modeling results for review.

8.5. The appropriate modeling referred to in subsection 8.4 is as follows:

8.5.a. For $SO_2$ and 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 or shutdown source on the same premises or in the immediate vicinity of the proposed major stationary source or major modification and the pollutants disperse from substantially the same effective stack height, the air quality test of subdivision 4.1.d will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

8.5.b. Atmospheric simulation modeling for ozone impacts is not necessary for volatile organic compounds and $NO_X$. For such pollutants, meeting the requirements of subdivisions 4.1.c and 8.2.a will be adequate.

8.5.c. Proposed sources of VOC or $NO_X$ locating in a designated nonattainment area for ozone shall be subject to the provisions of section 4.

8.5.d. Proposed VOC or $NO_X$ sources locating within thirty-six (36) hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor are subject to section 4.

8.6. Credit for an emissions reduction can be claimed to the extent that the Secretary has not relied on it in issuing any permit under 45CSR14 or 45CSR19 and the Secretary has not relied on it in a demonstration of attainment or reasonable further progress.

8.7. The total amount of increased emissions, in tons per year, resulting from a major modification that must be offset shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

**§45-19-9. Administrative Procedures for Emission Offset Proposals.**

9.1. Emission offsets may be proposed by the applicant for the proposed major stationary source or major modification, the local community or the Secretary.

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

9.1.b. If the emission reductions which are to be used as offset credit for a proposed major stationary source or major modification are to be obtained in a State that neighbors West Virginia, or from another source at another site not controlled by the applicant, the offsets committed to must be embodied in a USEPA approved State Implementation Plan revision in the neighboring State and must be federally enforceable and enforceable by both such neighboring State and the Secretary and at all participating sources.

9.2. The applicant may propose emission offsets which involve:

9.2.a. Reductions from sources controlled by the applicant; or

9.2.b. Reductions from neighboring sources not controlled by the applicant.

9.3. A state or local community which desires that a major stationary source or major modification locate in its area may commit to reducing emissions from existing sources to sufficiently offset the impact of such proposed source.

9.4. Any emission offset proposal described in subsection 9.2 must be embodied either in the applicant's permit application and permit if such offsets are directly controlled by the applicant or if from neighboring sources located in the State not controlled by the applicant, in a consent order as provided in W. Va. Code §22-5-5, which such consent order shall be submitted to the USEPA for inclusion in the State Implementation Plan.

**§45-19-10. [Reserved.]**

**§45-19-11. [Reserved.]**

**§45-19-12. Reasonable Further Progress.**

12.1. By the time the proposed major source or major modification is to commence operation, sufficient offsetting emissions reductions shall be in effect such that the total allowable emissions from existing sources in the area, from new or modified sources which are not major sources and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for the permit to construct or modify so as to represent, when considered together with the plan provisions required under section 172 of the act (42 USC 7502), reasonable further progress.

12.2. For the purposes of satisfying the requirements of subsection 12.1:

12.2.a. The determination of total emissions at both the time prior to the application for a permit subject to the requirements of this chapter and the time the permitted source or modification would commence operation, shall be made in a manner consistent with the assumptions in the applicable state implementation plan approved by the administrator concerning baseline emissions for the demonstration of reasonable further progress and attainment of the National Ambient Air Quality Standards for the particular

pollutant subject to review under this chapter; and

12.2.b. To demonstrate reasonable further progress a new or modified source subject to review under this rule shall obtain offsets in an amount equal to or greater than the amount specified by the applicable offset ratio. If an offset ratio is not specified, the offset ratio shall be at least 1 to 1.

**§45-19-13. Source Impact Analysis.**

13.1. The applicant for a preconstruction permit shall demonstrate to the satisfaction of the Secretary that all of the following conditions are met:

13.1.a. The emissions offsets required under subdivision 4.1.c, when considered in conjunction with the proposed emissions increase, will have a net air quality benefit in the affected area, as required under subdivision 4.1.d;

13.1.b. The emissions from the proposed new major source or major modification, when considered in conjunction with the emissions offsets required under section 4, will not contribute to nonattainment in, or interfere with maintenance by, any other state with respect to any national primary or secondary ambient air quality standard;

13.1.c. The emissions from the proposed new major source or major modification, when considered in conjunction with the emissions offsets required under section 4, will not interfere with measures required to be included in the applicable implementation plan for any other state under a program for the prevention of significant deterioration or for the protection of visibility; and

13.1.d. An analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source demonstrates the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

**§45-19-14. Permit Requirements for Major Stationary Sources and Major Modifications.**

14.1. Permit Application.

14.1.a. No person shall cause, suffer, allow, or permit the construction or relocation of any major stationary source or a major modification to be commenced in any area designated as nonattainment under §107 of the CAA, without notifying the Secretary of such intent, and obtaining prior to commencement of construction, modification, or relocation, a permit(s) to so construct, modify or relocate the major stationary source or major modification.

14.1.b. No person shall cause, suffer, allow or permit the construction or relocation of any major stationary source or major modification to be commenced anywhere in the state, if the emissions would cause a violation of a NAAQS or would cause a significant impact on air quality in a designated nonattainment area, without notifying the Secretary of such intent and obtaining, prior to commencement of construction, modification or relocation, all necessary preconstruction approvals or permits to so construct, modify or relocate the major stationary source or major modification.

14.2. The owner or operator of the source shall file with the Secretary a timely and complete permit application containing sufficient information as, in the judgement of the Secretary, will enable the Secretary

to determine whether such source construction, modification or relocation will be in conformance with the provisions of any rules promulgated by the Secretary and with the requirements of this rule. Such information may include, but not be limited to:

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

14.2.b. A detailed schedule for construction of the source or modification;

14.2.c. A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that the requirement for lowest achievable emission rate as applicable would be met;

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

14.2.e. A detailed description of any emission offsets proposed by the applicant.

14.3. Each permit application shall be signed by the owner or operator of the major stationary source or major modification, and such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, or relocation, and operation of the major stationary source or major modification in accordance with applicable rules and regulations of the Secretary, the permit application and any permit issued pursuant to this rule.

14.4. Permit Review.

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

14.4.b. After completing the review of a complete application, the Secretary shall make a preliminary determination whether a permit should be approved, approved with conditions or disapproved.

14.4.c. After the public participation requirements specified in section 15 have been satisfied, the Secretary shall notify the applicant in writing of the final determination.

14.5. Permit Issuance or Denial.

14.5.a. Within six (6) months of the receipt of a complete permit application for construction or relocation of a major stationary source or for a major modification, the Secretary shall issue such a permit unless the Secretary determines that the proposed major stationary source or major modification has not satisfied the requirements of this rule, will violate applicable emission standards, will interfere with the attainment or maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this rule, in which case the Secretary shall issue an order for the prevention of such construction, modification, or relocation.

14.5.b. If the Secretary denies a permit application for the proposed construction or relocation of any major stationary source or major modification, the order shall set forth the Secretary's reasons with reasonable specificity.

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

**§45-19-15. Public Review Procedures.**

15.1. At the time that an application for a construction or modification is filed, the applicant shall also place a Class I legal advertisement in a newspaper of general circulation in the area where the source is or will be located. No such permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought, the proposed start-up date for the source and a contact telephone number for more information.

15.2. The Secretary shall make available in at least one location in the region in which the proposed source would be constructed a copy of all materials the applicant submitted (excluding data entitled to protection as confidential information under the Code and any rules pursuant thereto), a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

15.3. The Secretary shall place a Class I legal advertisement in a paper of general circulation in the area where the proposed source would be constructed, modified, or relocated. The advertisement shall contain, as a minimum, the name of the applicant, the type and location of the source, the proposed start-up date, the preliminary determination, notification of the opportunity for written public comment, provisions for requesting a public meeting, details concerning the time and place of such a meeting if one has already been scheduled, and notification of the opportunity for comment at a public meeting if such meeting is to be conducted. A public comment period of thirty (30) days shall be provided and so stated in the advertisement.

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

15.5. Public comments submitted within thirty (30) days after the Secretary's public notification of an opportunity for comment upon a proposed construction or relocation of a major stationary source or major modification and comments submitted within a specified period not to exceed fifteen (15) days after any public meeting to receive comment on such proposed construction, modification, or relocation shall be considered by the Secretary before making a final decision on the approvability of the application. The Secretary shall make copies of all comments available for public inspection in the same locations where the Secretary made available preconstruction information relating to the proposed source or modification.

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

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

**§45-19-16. Public Meetings.**

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

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

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

**§45-19-17. Permit Transfer, Cancellation and Responsibility.**

17.1. Permit Transfer. – A permittee may petition the Secretary for a transfer of a permit previously issued under 45CSR19. The Secretary shall approve such permit transfer provided the following conditions are met:

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

17.1.b. The transferee provides written acknowledgment that it accepts and will comply with all the requirements, terms, and conditions as contained in the subject permit.

17.2. Permit Cancellation.

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

17.2.b. The Secretary may cancel or suspend the permit if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to. Upon notice of the Secretary's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the Secretary in accordance with the provisions of W.Va. Code §22-5-5 to show cause why the permit should not be suspended, modified or revoked.

17.3. Responsibility.

17.3.a. Possession of a permit does not relieve any person of the responsibility of complying with

any and all rules of the Secretary or W.Va. Code §22-1-1 et seq. and any other requirements under local, State or Federal law.

17.3.b. A source which has not operated at least five hundred (500) hours in one 12-month period within the past previous five-year time period may be considered permanently shutdown, unless such source can provide to the Secretary, with reasonable specificity, information to the contrary. All permits may be modified or revoked and/or reapplication or application for new permits may be required for any source determined to be permanently shutdown.

17.3.c. Any person who owns or operates any particular source or modification which becomes a major stationary source or major modification solely by virtue of a relaxation in any limitation, enforceable by the Administrator or the Secretary, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation), shall become subject to the requirements of this rule as though construction had not yet commenced on the source or modification.

17.3.d. Any owner or operator who constructs, modifies or operates a stationary source not in accordance with the permit application submitted or with the terms of any approval to construct, or any owner or operator of a stationary source or modification subject to this rule who commences construction without applying for and receiving permit approval from the Secretary, shall be subject to appropriate enforcement action in accordance with the W.Va. Code.

17.4. Except as otherwise provided in subdivision 17.4.f, the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances where there is a reasonable possibility, within the meaning of subdivision 17.4.f, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in subdivisions 2.59.a through 2.59.c for calculating projected actual emissions.

17.4.a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of all of the following:

17.4.a.1. A description of the project;

17.4.a.2. Identification of the emissions unit or units whose emissions of a regulated NSR air pollutant could be affected by the project; and

17.4.a.3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR air pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subdivision 2.59.c and an explanation why the amount was excluded, and any netting calculations, if applicable;

17.4.b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information required under subdivision 17.4.a to the Secretary. Nothing in this subdivision shall be construed to require the owner or operator of the a unit to obtain any determination from the department before beginning actual construction.

17.4.c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision 17.4.b.

The owner or operator shall calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

17.4.d. If the emissions unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Secretary within 60 days after the end of each year during which records must be generated under subdivision 17.4.c setting out the unit's annual emissions~~, as monitored pursuant to subdivision 17.4.c~~, during the calendar year that preceded submission of the report.

17.4.e. If the emissions unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subdivision 17.4.a, exceed the baseline actual emissions, as documented and maintained pursuant to subdivision 17.4.c, by a significant amount for that regulated NSR air pollutant, and if the emissions differ from the preconstruction projection that was provided to the department pursuant to subdivision 17.4.b. The report shall be submitted to the Secretary within 60 days after the end of the year. The report shall contain the following information:

17.4.e.1. The name, address and telephone number of the major stationary source;

17.4.e.2. The annual emissions as calculated pursuant to paragraph 17.4.a.3; and

17.4.e.3. Any other information that the owner or operator wishes to include in the report, e.g., an explanation as to why the emissions differ from the preconstruction projection.

17.4.f. A "reasonable possibility" under subsection 17.4 occurs when the owner or operator calculates the project to result in either:

17.4.f.1. A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under subsection 2.67 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

17.4.f.2. A projected actual emissions increase that, added to the amount of emissions excluded under subdivision 2.59.c, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under subsection 2.67 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this paragraph, and not also within the meaning of paragraph 17.4.f.1, then provisions under subdivisions 17.4.b through 17.4.e do not apply to the project.

17.5. The owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection 17.4 available for review upon request for inspection by the Secretary or the public.

17.6. The requirements of this rule applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a $NO_x$ waiver applying the standards set forth under section 182(f) of the CAA and the waiver continues to

apply.

17.7. Emission Offset Ratios.

17.7.a. In meeting the emissions offset requirements of subsection 7.1, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in subdivisions 17.7.b through 17.7.d.

17.7.b. In meeting the emissions offset requirements of subsection 7.1 for ozone nonattainment areas that are subject to Title I, Part D, Subpart 2 of the CAA, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

17.7.b.1. In any marginal nonattainment area for ozone – at least 1.1:1;

17.7.b.2. In any moderate nonattainment area for ozone – at least 1.15:1;

17.7.b.3. In any serious nonattainment area for ozone – at least 1.2:1;

17.7.b.4. In any severe nonattainment area for ozone – at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

17.7.b.5. In any extreme nonattainment area for ozone – at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

17.7.c. Notwithstanding the requirements of subdivision 17.7.b for meeting the requirements of subsection 7.1, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Title I, Part D, Subpart 2 of the CAA, except for serious, severe, and extreme ozone nonattainment areas that are subject to Title I, Part D, Subpart 2 of the CAA.

17.7.d. In meeting the emissions offset requirements of subsection 7.1 for ozone nonattainment areas that are subject to Title I, Part D, Subpart 1 of the CAA (but are not subject to Title I, Part D, Subpart 2 of the CAA, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

17.8. The requirements of this rule applicable to major stationary sources and major modifications of $PM_{10}$ shall also apply to major stationary sources and major modifications of $PM_{10}$ precursors, except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels that exceed the $PM_{10}$ ambient standards in the area.

17.9. In meeting the emissions offset requirements of section 7, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subsection. The offset requirements in section 7 for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under subdivision 2.61.c if such offsets comply with the following interprecursor trading ratios:

17.9.a. $NO_x$ to primary $PM_{2.5}$ – 200 tons of $NO_x$ for 1 ton of $PM_{2.5}$; and

17.9.b. $SO_2$ to primary $PM_{2.5}$ – 40 tons of $SO_2$ for 1 ton of $PM_{2.5}$.

**§45-19-18. Disposition of Permits.**

18.1. In the event that the Secretary promulgates revisions to this rule, or in the event of a redesignation of an attainment or non-attainment area (in accordance with section §107 of the CAA) prior to final disposition of a permit, the Secretary shall make final disposition of the permit application in accordance with such newly promulgated standards or redesignation.

**§45-19-19. Requirements for Air Quality Models.**

19.1. All estimates of ambient concentrations required under this rule shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W (Guideline on Air Quality Models).

19.2. Where an air quality impact model specified in 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted, provided that said modification or substitution is approved in writing by the Administrator.

**§45-19-20. [Reserved.]**

**§45-19-21. [Reserved.]**

**§45-19-22. [Reserved.]**

**§45-19-23. Actuals PAL.**

23.1. Applicability.

23.1.a. The Secretary may approve the use of an actuals PAL for any existing major stationary source, except as provided in subdivision 23.1.b, if the PAL meets the requirements in subsections 23.1 through 23.15. The term "PAL" shall mean "actuals PAL" throughout section 23.

23.1.b. The Secretary shall not allow an actuals PAL for VOC or $NO_x$ for any major stationary source located in an extreme ozone nonattainment area.

23.1.c. Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in subsections 23.1 through 23.15, and complies with the PAL permit:

23.1.c.1. Is not a major modification for the PAL pollutant;

23.1.c.2. Does not have to be approved through the plan's nonattainment major NSR program; and

23.1.c.3. Is not subject to the provisions in subdivision 17.3.c (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major

NSR program).

23.1.d. Except as provided under paragraph 23.1.c.3, a major stationary source shall continue to comply with all applicable Federal or State requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

23.2. Definitions.

23.2.a. Allowable emissions means "allowable emissions" as defined in subsection 2.4, except as this definition is modified according to paragraphs 23.2.a.1 through 23.2.a.2.

23.2.a.1. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

23.2.a.2. An emissions unit's potential to emit shall be determined using the definition in subsection 2.55, except that the words "or enforceable as a practical matter" should be added after "federally enforceable."

23.3. Permit application requirements. -- As part of a permit application submitted pursuant to 45CSR13 requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the Secretary for approval:

23.3.a. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, Federal or State applicable requirements, emission limitations or work practices apply to each unit.

23.3.b. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

23.3.c. The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision 23.11.a.

23.4. General requirements for establishing PALs.

23.4.a. The Secretary may establish a PAL at a major stationary source, provided that at a minimum, the requirements in paragraphs 23.4.a.1 through 23.4.a.7 are met.

23.4.a.1. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

23.4.a.2. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection 23.5.

23.4.a.3. The PAL permit shall contain all the requirements of subsection 23.7.

23.4.a.4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

23.4.a.5. Each PAL shall regulate emissions of only one pollutant.

23.4.a.6. Each PAL shall have a PAL effective period of 10 years.

23.4.a.7. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections 23.12 through 23.14 for each emissions unit under the PAL through the PAL effective period.

23.4.b. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under subsections 7.2 through 7.6, 8.1 through 8.2 and 8.6 through 8.9 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

23.5. Public participation requirement for PALs. – PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR §§ 51.160 and 51.161. The Secretary shall provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The Secretary must address all material comments before taking final action on the permit.

23.6. Setting the 10-year actuals PAL level.

23.6.a. Except as provided in subdivision 23.6.b, actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in subsection 2.52.) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under subsection 2.66 or under the CAA, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period must be added to the PAL level in an amount equal to the potential to emit of the units. The Secretary shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable Federal or State regulatory requirement(s) that the Secretary is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOX to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

23.6.b. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subdivision 23.6.a, the emissions must be added to the PAL level in an amount equal to the

potential to emit of the units.

23.7. Contents of the PAL permit. -- The PAL permit shall contain, at a minimum, the information in subdivisions 23.7.a through 23.7.j.

23.7.a. The PAL pollutant and the applicable source-wide emission limitation in tons per year.

23.7.b. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

23.7.c. Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with subsection 23.10 before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Secretary.

23.7.d. A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

23.7.e. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection 23.9.

23.7.f. The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision 23.13.a.

23.7.g. A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under subsection 23.12.

23.7.h. A requirement to retain the records required under subsection 23.3 on site. Such records may be retained in an electronic format.

23.7.i. A requirement to submit the reports required under subsection 23.14 by the required deadlines.

23.7.j. Any other requirements that the Secretary deems necessary to implement and enforce the PAL.

23.8. PAL effective period and reopening of the PAL permit.

23.8.a. PAL effective period. -- The Secretary shall specify a PAL effective period of 10 years.

23.8.b. Reopening of the PAL permit.

23.8.b.1. During the PAL effective period, the Secretary shall reopen the PAL permit to:

23.8.b.1.A. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

23.8.b.1.B. Reduce the PAL if the owner or operator of the major stationary source creates

creditable emissions reductions for use as offsets under subsections 7.2 through 7.6, 8.1 through 8.2 and 8.6 through 8.9.

23.8.b.1.C. Revise the PAL to reflect an increase in the PAL as provided under subsection 23.11.

23.8.b.2. The Secretary may reopen the PAL permit for the following:

23.8.b.2.A. Reduce the PAL to reflect newly applicable Federal requirements (for example, NSPS) with compliance dates after the PAL effective date.

23.8.b.2.B. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the major stationary source under the plan.

23.8.b.2.C. Reduce the PAL if the Secretary determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a Federal Class I area by a Federal Land Manager and for which information is available to the general public.

23.8.b.3. Except for the permit reopening in subparagraph 23.8.b.1.A for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection 23.5.

23.9. Expiration of a PAL. – Any PAL which is not renewed in accordance with the procedures in subsection 23.10 shall expire at the end of the PAL effective period, and the requirements in subdivision 23.9.a through 23.9.e shall apply.

23.9.a. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in paragraphs 23.9.a.1 through 23.9.a.2.

23.9.a.1. Within the time frame specified for PAL renewals in subdivision 23.10.b, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the Secretary) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision 23.10.e, such distribution shall be made as if the PAL had been adjusted.

23.9.a.2. The Secretary shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Secretary determines is appropriate.

23.9.b. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Secretary may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

23.9.c. Until the Secretary issues the revised permit incorporating allowable limits for each

emissions unit, or each group of emissions units, as required under paragraph 23.9.a.1, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

23.9.d. Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification in subdivision 2.33.

23.9.e. The major stationary source owner or operator shall continue to comply with any State or Federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to subdivision 17.3.c, but were eliminated by the PAL in accordance with the provisions in paragraph 23.1.c.3.

23.10. Renewal of a PAL.

23.10.a. The Secretary shall follow the procedures specified in subsection 23.5 in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Secretary.

23.10.b. Application deadline. -- The owner or operator of a major stationary source shall submit a timely application to the Secretary to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

23.10.c. Application requirements. -- The application to renew a PAL permit shall contain the information required in paragraphs 23.10.c.1 through 23.10.c.4.

23.10.c.1. The information required in subdivisions 23.3.a through 23.3.c.

23.10.c.2. A proposed PAL level.

23.10.c.3. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

23.10.c.4. Any other information the owner or operator wishes the Secretary to consider in determining the appropriate level for renewing the PAL.

23.10.d. PAL adjustment. -- In determining whether and how to adjust the PAL, the Secretary shall consider the options outlined in paragraphs 23.10.d.1 and 23.10.d.2. However, in no case may any such adjustment fail to comply with paragraph 23.10.d.3.

23.10.d.1. If the emissions level calculated in accordance with subsection 23.6 is equal to or greater than 80 percent of the PAL level, the Secretary may renew the PAL at the same level without

considering the factors set forth in paragraph 23.10.d.2.; or

23.10.d.2. The Secretary may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Secretary in its written rationale.

23.10.d.3. Notwithstanding paragraphs 23.10.d.1 and 23.10.d.2,

23.10.d.3.A. If the potential to emit of the major stationary source is less than the PAL, the Secretary shall adjust the PAL to a level no greater than the potential to emit of the source; and

23.10.d.3.B. The Secretary shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection 23.11 (increasing a PAL).

23.10.e. If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Secretary has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

23.11. Increasing a PAL during the PAL effective period.

23.11.a. The Secretary may increase a PAL emission limitation only if the major stationary source complies with the provisions in paragraphs 23.11.a.1 through 23.11.a.4.

23.11.a.1. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

23.11.a.2. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

23.11.a.3. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in paragraph 23.11.a.1, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

23.11.a.4. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

23.11.b. The Secretary shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with paragraph 23.11.a.2), plus the sum of the baseline actual emissions of the small emissions units.

23.11.c. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection 23.5.

23.12. Monitoring requirements for PALs.

23.12.a. General requirements.

23.12.a.1. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

23.12.a.2. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in paragraphs 23.12.b.1 through 23.12.b.4 and must be approved by the Secretary.

23.12.a.3. Notwithstanding paragraph 23.12.a.2, you may also employ an alternative monitoring approach that meets paragraph 23.12.a.1 if approved by the Secretary.

23.12.a.4. Failure to use a monitoring system that meets the requirements of this rule renders the PAL invalid.

23.12.b. Minimum Performance Requirements for Approved Monitoring Approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 23.12.c through 23.12.i:

23.12.b.1. Mass balance calculations for activities using coatings or solvents;

23.12.b.2. CEMS;

23.12.b.3. CPMS or PEMS; and

23.12.b.4. Emission Factors.

23.12.c. Mass Balance Calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

23.12.c.1. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

23.12.c.2. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

23.12.c.3. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Secretary determines there is site-specific data or a site-specific monitoring program to support another content within the range.

23.12.d. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

23.12.d.1. CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, appendix B; and

23.12.d.2. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

23.12.e. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

23.12.e.1. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

23.12.e.2. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Secretary while the emissions unit is operating.

23.12.f. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

23.12.f.1. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

23.12.f.2. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

23.12.f.3. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Secretary determines that testing is not required.

23.12.g. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such

periods is specified in the PAL permit.

23.12.h. Notwithstanding the requirements in subdivisions 23.12.c through 23.12.g, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Secretary shall, at the time of permit issuance:

23.12.h.1. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

23.12.h.2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

23.12.i. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Secretary. Such testing must occur at least once every 5 years after issuance of the PAL.

23.13. Recordkeeping requirements.

23.13.a. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of section 23 and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

23.13.b. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

23.13.b.1. A copy of the PAL permit application and any applications for revisions to the PAL; and

23.13.b.2. Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

23.14. Reporting and notification requirements. -- The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Secretary in accordance with the applicable title V operating permit program. The reports shall meet the requirements in subdivisions 23.14.a through 23.14.c.

23.14.a. Semi-Annual Report. -- The semi-annual report shall be submitted to the Secretary within 30 days of the end of each reporting period. This report shall contain the information required in paragraphs 23.14.a.1 through 23.14.a.7.

23.14.a.1. The identification of owner and operator and the permit number.

23.14.a.2. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision 23.13.a.

23.14.a.3. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.

23.14.a.4. A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

23.14.a.5. The number, duration, and cause of any deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and any corrective action taken.

23.14.a.6. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision 23.12.g.

23.14.a.7. A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

23.14.b. Deviation report. – The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 45CSR30-5.1.c.3 shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 45CSR30-5.1.c.3. The reports shall contain the following information:

23.14.b.1. The identification of owner and operator and the permit number;

23.14.b.2. The PAL requirement that experienced the deviation or that was exceeded;

23.14.b.3. Emissions resulting from the deviation or the exceedance; and

23.14.b.4. A signed statement by the responsible official (as defined by 45CSR30) certifying the truth, accuracy, and completeness of the information provided in the report.

23.14.c. Re-validation results. – The owner or operator shall submit to the Secretary the results of any re-validation test or method within 3 months after completion of such test or method.

23.15. Transition requirements.

23.15.a. The Secretary shall not issue a PAL that does not comply with the requirements in subsections 23.1 through 23.15 after the Administrator has approved regulations incorporating these requirements into the WV State Implementation Plan (SIP).

23.15.b. The Secretary may supersede any PAL which was established prior to the date of approval of this rule by the Administrator with a PAL that complies with the requirements of subsections 23.1 through 23.15.

**§45-19-24. Conflict with Other Permitting Rules.**

24.1. For sources required to obtain a permit under this rule, the provisions of 45CSR13 and 45CSR14 requiring a permit do not apply, so that only a single permit is required; provided however, that:

24.1.a. The base permit application fee of $1,000 pursuant to 45CSR22, subdivision 3.4.a shall apply to such sources in addition to other applicable fees; and

24.1.b. Any permit issued under this rule includes conditions that ensure compliance with the provisions of 45CSR13 and 45CSR19 to the extent applicable to any regulated NSR pollutant not otherwise covered under this rule.

24.2. For sources that may be subject to 45CSR13, 45CSR14 and/or 45CSR19, the more stringent provisions of each applicable rule shall apply.

**§45-19-25. Inconsistency Between Rules.**

25.1. In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

BEFORE THE WEST VIRGINIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

IN THE MATTER OF:

PROPOSED 2011 RULES
45CSR19 - Permits for Construction and
Major Modification of Major Stationary
Sources of Air Pollution Which Cause
or Contribute to Nonattainment

**TRANSCRIPT OF PROCEEDINGS** had or testimony adduced in the above-entitled matter, on the 12th day of July, 2010, commencing at 6:20 p.m. and concluding at 6:21 p.m., in the Dolly Sods Room, at 601 57th Street, S.E., Charleston, Kanawha County, West Virginia, pursuant to notice to all interested parties.

BEFORE: **WILLIAM F. DURHAM**, Deputy Director
Assistant Director, Planning
Division of Air Quality

ORIGINAL

**NANCY MCNEALY**
CERTIFIED COURT REPORTER
Post Office Box 13415
Charleston, West Virginia 25360-0415
(304) 988-2873 FAX (304) 988-1419

# I N D E X

MR. DURHAM: This public hearing will now come to order on this 12th day of July, 2010, at the West Virginia Department of Environmental Protection Headquarters. Comments and testimony will be accepted until the close of the hearing and will be made part of the rule-making record. Any question regarding revisions to the rules will be included with your comments, and any such question will be answered as part of the response to comments in the rule-making record.

The purpose of this public hearing is to satisfy state rule-making requirements by accepting comments on proposed revisions to rule 45CSR19 - *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment.*

This rule establishes a state construction permit program consistent with the federal Clean Air Act's Title I program and implementing regulations at 40 CFR §51.165, "Permit Requirements." 45CSR19 is part of the State Implementation Plan and sets forth the criteria and procedures for major stationary sources to obtain a permit to construct, operate and/or modify a major source located in a nonattainment area or impacting a nonattainment area.

Revisions to the rule include a new subsection

1.5, which provides that references to the federal counterpart will be construed as the version which was in effect as of June 1, 2010. Also, the term "affected facilities" has been clarified. Other minor revisions ensure consistency with the federal counterpart language. Upon authorization and promulgation of 45CSR19, the Division will submit he rule to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan pursuant to the federal Clean Air Act. The floor is now open for comments.

(No comments were made.)

MR. DURHAM: There being nothing further, this public hearing for proposed 45CSR19 is concluded.

(WHEREUPON, the hearing was concluded.)

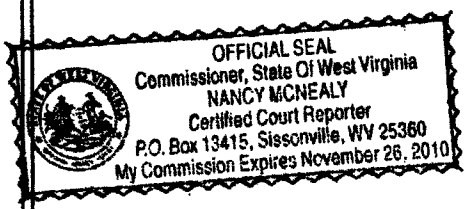
BEFORE THE WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, **NANCY MCNEALY**, Certified Verbatim Court Reporter and Commissioner of West Virginia, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 13th day of July, 2010.

My commission expires November 26, 2010.




Certified Verbatim Reporter
Commissioner of West Virginia

dep

west virginia department of environmental protection

# SIGN-IN SHEET

Public Hearing on the Division of Air Quality Rules 45CSR8, 45CSR14, 45CSR16, 45CSR18, 45CSR19, 45CSR25 and 45CSR34

July 12, 2010, 6:00 p.m.

The Department of Environmental Protection asks for the information below so that agency staff may provide responses and information about decisions to you. The information you voluntarily provide on this sheet becomes part of the public record related to this topic and may be released if requested under the Freedom of Information Act.

| Name (please print) | Address | Organization | Phone | E-mail | Comment Y/N |
|---|---|---|---|---|---|
| Pam Nixon | | WV DEP | | | |
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**Promoting a healthy environment.**

EPACommentsRules14&19

From: Mccauley.Sharon@epamail.epa.gov
Sent: Monday, July 12, 2010 3:45 PM
To: Mason, James L
Cc: Anderson.Kathleen@epamail.epa.gov
Subject: WV Proposed Regulations for 45 CSR 14 and 45 CSR 19 for 2011

Thank you for the opportunity to review the proposed 2011 WV Department of Air Quality's Prevention of Significant Deterioration and Nonattainment New Source Review regulations located at 45 CSR 14 and 45 CSR 19, respectively. Based on our review, we were pleased to see WV setting new limitations for PM2.5, the addition of emission offest ratios and provisions for fugitive emissions based on the most recent stay of that regulation. EPA has no further comments regarding these proposed regulations. If you have any questions regarding this note, please feel free to contact me at the number below.

Sharon McCauley
State Liaison Officer
Office of Permits and Air Toxics (3AP10)
Phone: 215/814-3376
Fax: 215/814-2134
Email: mccauley.sharon@epa.gov

BouldinComments

From: Cosco, Kathy on behalf of DEP Comments
Sent: Tuesday, July 13, 2010 9:06 AM
To: Mason, James L
Subject: FW: Comments re Division of Air Quality Proposed Rules

From: Nancy Bouldin [mailto:nancy_bouldin@hotmail.com]
Sent: Thursday, July 08, 2010 12:13 PM
To: DEP Comments
Subject: Comments re Division of Air Quality Proposed Rules

TO: West Virginia Department of Environmental Protection
FROM: Nancy Bouldin, Greenville, Monroe County, WV 24945
DATE: July 8, 2010

Comments Re: Division of Air Quality Proposed Rules
[Public Comment Period: June 11, 2010 - July 12, 2010 at conclusion of public hearing meeting]

45CSR8 - Ambient Air Quality Standards
Comment: I strongly urge the WVDEP to enact and enforce air quality standards under 45CSR8 that meet OR EXCEED federal air quality standards. Protecting the air quality of West Virginia is essential to the state's human and economic well-being, now and into the future. With increasing activity related to Marcellus Shale deep-gas drilling added to ongoing coal and other industrial operations, the WVDEP (West Virginia Department of Environmental Protection) MUST act in the interests of the residents of the state and fulfill your mission to truly PROTECT our air, water, and other environmental resources from being sacrificed to the interests of others. Air quality may not seem like the worst problem that comes with deep-gas drilling, but ask the residents of Wetzel County, WV how their air quality has deteriorated due to constant over-sized truck hauling, degraded roads, dust, gravel, flares, and chemical pollutants. We need adequate safeguards for our communities and farmlands.

Re §45-8-4 - Inconsistency Between Rules - I support the proposed statement 7.1 that in the event of inconsistency between rules "the determination shall be based upon the application of the more stringent provision, term, condition, method or rule."

45CSR14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration
Comment: I strongly urge the WVDEP to enact and enforce standards under 45CSR14 that meet OR EXCEED federal standards.

45CSR16 - Standards of Performance for New Stationary Sources
Comment: I strongly urge the WVDEP to enact and enforce standards under 45CSR16 that meet OR EXCEED federal standards.

45CSR18 - Control of Air Pollution from Combustion of Solid Waste
Comment: I strongly urge the WVDEP to enact and enforce standards under 45CSR18 that meet OR EXCEED federal standards.

BouldinComments

45CSR19 - Permits for Construction and Major Modification of Major Stationary Sources of Air
Pollution Which Cause or Contribute to Nonattainment
Comment: I strongly urge the WVDEP to enact and enforce standards for permits under 45CSR19 that
meet OR EXCEED federal standards.

45CSR25 - Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal
Facilities
Comment: I strongly urge the WVDEP to enact and enforce standards under 45CSR25 that meet OR
EXCEED federal standards.

45CSR34 - Emission Standards for Hazardous Air Pollutants
Comment: I strongly urge the WVDEP to enact and enforce standards under 45CSR34 that meet OR
EXCEED federal standards. In particular, under §45-34-4 - Adoption of Standards -- I object to the fact
that it appears that West Virginia intends to exclude provisions contained in the federal EPA standards,
thereby making West Virginia more susceptible to practices that would pollute our air.

Many counties in West Virginia have suffered over the years from mining, timbering, and other interests
that bring MINIMAL true value to residents, economically or otherwise, and do MAXIMUM damage to
the state's environment. With the next "gold-rush" in deep well drillling, we need all the protection we
can get. With minimal regulation or authority in place at the local and county level in West Virginia, our
counties desperately need to have a strong DEP at the state level with the regulations, enforcement
resources, and will-power to protect our precious -- and vulnerable -- natural resources.

Respectfully,
Nancy Bouldin
Greenville, WV

EmrichComments

From: Cosco, Kathy on behalf of DEP Comments
Sent: Tuesday, July 13, 2010 9:08 AM
To: Mason, James L
Subject: FW: 45CSR19 11a.

Kathy Cosco
Communications Director
WV Department of Environmental Protection
601 57th St. SE
Charleston, WV 25304
Office 304-926-0499, ext. 1331
Cell 304-561-8996

From: Henry Deare [mailto:spreadingchestnut@yahoo.com]
Sent: Monday, July 12, 2010 5:25 PM
To: DEP Comments
Subject: 45CSR19 11a.

The construction of major sources of air pollution should no longer be permitted. Our
economy must retool with renewable, non polluting resources, instead of wasting time

and
energy by constructing new facilities that are obsolete when permitted.

11b.
Major stationary sources of air pollution which presently exisit would do well to modify
for compliance with the air quality standards set forth in the Clean Air Act as a first
priority and with all haste.
Renewable resources is homeland security.

Protect our regenerating life supporting

ecosystems.

Oxygen for life!

Linda Lee E.

Emrich

HC 73 Box 59

G

Pence

Springs, W.V.

24962

# MEMORANDUM

**TO:** Randy C. Huffman, Cabinet Secretary

**FROM:** Environmental Protection Advisory Council

**RE:** Recommendations for 2011 Legislative Rules

**DATE:** June 7, 2010

The purpose of this memorandum is to convey to you the recommendations of the Environmental Protection Advisory Council from its May 27 and June 3 meetings.

1. Re: 47 C.S.R. 2 – *Requirements Governing Water Quality Standards.* Council recommends that the rule be revised to state that the TDS standard shall apply only at the point of intake for a public drinking water supply, not in all waters of the State, as currently proposed. Please note that Ms. Hallinan and Dr. Harris voted against this recommendation.

2. Council also recommends that the Air Quality rules contain language in the sections entitled "Inconsistency Between Rules" to read as follows: "In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule using sound scientific information." Please note that Ms. Hallinan voted against this recommendation and Dr. Harris abstained from voting.

**45CSR14 AND 45CSR19**

**PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION FOR THE PREVENTION OF SIGNIFICANT DETERIORATION**
**AND**
**PERMITS FOR CONSTRUCTION AND MAJOR MODIFICATION OF MAJOR STATIONARY SOURCES OF AIR POLLUTION WHICH CAUSE OR CONTRIBUTE TO NONATTAINMENT**

**RESPONSE TO COMMENTS**

On June 11, 2010, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 12, 2010 to accept oral comments on proposed revisions to legislative rules 45CSR14 and 45CSR19. Written comments were also accepted through 6:00 PM on Monday, July 12, 2010.

No one verbally commented at the public hearing concerning proposed rules 45CSR14 or 45CSR19. Two commenters submitted written comments on proposed rule 45CSR14. Three commenters submitted written comments on proposed rule 45CSR19. DAQ addresses these comments below.

## I. COMMENTER: Environmental Protection Agency

**COMMENT A.** The commenter states, *"Thank you for the opportunity to review the proposed 2011 WV Department of Air Quality's Prevention of Significant Deterioration and Nonattainment New Source Review regulations located at 45 CSR 14 and 45 CSR 19, respectively. Based on our review, we were pleased to see WV setting new limitations for PM2.5, the addition of emission offest* (sic) *ratios and provisions for fugitive emissions based on the most recent stay of that regulation. EPA has no further comments regarding these proposed regulations."*

RESPONSE A. No response required.

## II. COMMENTER: Nancy Bouldin

**COMMENT A.** The commenter states, *"45CSR14 – Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration Comment: I strongly urge the WVDEP to enact and enforce standards under 45CSR14 that meet OR EXCEED federal standards.*

RESPONSE A. DAQ notes that the permit program under 45CSR14 comports to federal counterpart regulation promulgated by the U.S. EPA as of June 1, 2010.

**COMMENT B.** The commenter states, *"45CSR19 – Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment Comment: I strongly urge the WVDEP to enact and enforce standards for permits under 45CSR19 that meet OR EXCEED federal standards."*

RESPONSE B. DAQ notes that the permit program under 45CSR19 comports to federal counterpart regulation promulgated by the U.S. EPA as of June 1, 2010.

## III. COMMENTER: Linda Lee E. Emrich

**COMMENT A.** The commenter states, *"Subject: 45CSR19 11a. The construction of major sources of air pollution should no longer be permitted. Our economy must retool with renewable, non polluting resources, instead of wasting time and energy by constructing new facilities that are obsolete when permitted."*

RESPONSE A. DAQ notes that the permit program under 45CSR19 is a required component of the West Virginia State Implementation Plan under the Federal Clean Air Act.

**COMMENT B.** The commenter states, *"11b. Major stationary sources of air pollution which presently exisit* (sic) *would do well to modify for compliance with the air quality standards set forth in the Clean Air Act as a first priority and with all haste. Renewable resources is homeland security. Protect our regenerating life supporting ecosystems. Oxygen for life!"*

RESPONSE B. DAQ notes that any major stationary source which modifies its operation must do so according to the permitting requirements under 45CSR14 or 45CSR19, as applicable, as required by states (or U.S. EPA) under the federal Clean Air Act.

## IV. COMMENTER: DEP Advisory Council

**COMMENT A.** The commenter states, *"Council also recommends that the Air Quality rules contain language in the sections entitled 'Inconsistency Between Rules" to read as follows: "In the event of any inconsistency between this rule and any other rule of the West Virginia Department of Environmental Protection, the inconsistency shall be resolved by the determination of the Secretary and the determination shall be based upon the application of the more stringent provision, term, condition, method, or rule using sound scientific information.'"*

RESPONSE A. DAQ appreciates the comment, however, the comment involves language that is beyond the scope of proposed revisions, and, therefore requires no response.