

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

Form #3

Do Not Mark In This Box

FILED

2009 JUL 28 PM 4: 34

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  NO

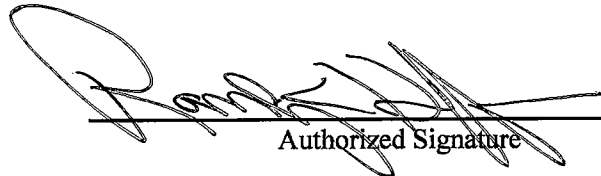
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 19

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, 2009

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 10, 2009

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 13, 2009 (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, 2009

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- f. **Name, title, address and phone/fax/e-mail numbers** 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

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Fax: (304) 926-0488

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John.A.Benedict@wv.gov

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- g. **IF DIFFERENT 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

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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

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b. Date of hearing or comment period:

N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**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 incorporation of federal changes to 40 CFR §51.165, including provisions for: 8-hour ozone national ambient air quality standard implementation, nonattainment new source review, ethanol production facilities, reasonable possibility in recordkeeping, and new source review provisions for PM<sub>2.5</sub>. Revisions to the rule also remove provisions for pollution control projects and clean units per a 2005 U.S. Court of Appeals for the District of Columbia Circuit court decision which vacated these provisions in the federal counterpart. 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, 2009 meeting, the Environmental Protection Advisory Council reviewed and discussed this proposed rule. (See attached minutes for Council's discussion).

# West Virginia Department of Environmental Protection

## ADVISORY COUNCIL MEETING MINUTES

Wednesday, June 3, 2009  
601 57th Street, SE, Charleston, West Virginia  
West Virginia Room – 3rd Floor

### IN ATTENDANCE:

#### *Members of the Council:*

Lisa Dooley  
Jackie Hallinan  
Larry Harris  
Karen Price  
Bill Raney  
Rick Roberts

#### *DEP:*

Raymond Franks II	General Counsel
Kristin Boggs	Associate General Counsel
Kathy Cosco	Chief Communications Officer
Tom Clarke	Director, Division of Mining & Reclamation
James Martin	Chief, Office of Oil & Gas
Robert Bates	Division of Water & Waste Management
Bill Brannon	Division of Water & Waste Management
Carroll Cather	Division of Water & Waste Management
Ellen Herndon	Division of Water & Waste Management
Jeff Knepper	Division of Water & Waste Management
Teresa Koon	Division of Water & Waste Management
Sudhir Patel	Division of Water & Waste Management
Yogesh Patel	Division of Water & Waste Management
Bill Timmermeyer	Division of Water & Waste Management
Ken Politan	Division of Mining & Reclamation
Jim Mason	Division of Air Quality

#### *Others:*

Don Garvin	Interested Citizen
Steve Hannah	Interested Citizen
Dave Yaussy	Interested Citizen

## OLD BUSINESS:

Raymond Franks called the meeting to order at 1:45 p.m. Mr. Franks noted that two members of the Council had pointed out a minor discrepancy in the April minutes as circulated, and that for expediency's sake the error would be corrected following the meeting and the April and June minutes each moved for approval at the September meeting.

Mr. Franks provided to the Council information it had requested at the April meeting regarding ongoing projects in the Office of Abandoned Mine Lands and recruiting potential for environmental inspectors. The Council agreed to review the information and discuss it in more detail at the September meeting.

## NEW BUSINESS:

Mr. Franks turned the meeting over to Kristin Boggs for presentation and discussion of the 2010 proposed Legislative Rules:

### **DIVISION OF WATER & WASTE MANAGEMENT – WATER RULES**

**47CSR10 – NPDES Rule:** Promulgated last in 2008. The proposed revisions reflect changes made to the Federal rule regarding Concentrated Animal Feeding Operations (CAFOs), which became effective in November 2008. EPA gave DEP two years to revise the State rules and start issuing permits. The revisions include a clarified definition of CAFO, a detailed explanation of the permitting process and the process for permit exemption, and an explanation of the required nutrient management plan. Technical revisions and corrections are made throughout.

**47CSR26 – Water Pollution Control Permit Fee Schedules:** Promulgated last in 2000. The proposed revisions reflect the CAFO changes made in the NPDES Rule. The fees for CAFOs will be as follows: \$300 for the initial application; \$300 for permit renewal; \$50 for permit modification; and \$50 for the annual permit fee. Technical revisions and corrections are made throughout.

**47CSR12 – Requirements re Groundwater Standards:** Promulgated last in 2002. The proposed revisions reflect updates and additions made to EPA's 2006 edition of the Drinking Water Standards & Health Advisories. Technical revisions and corrections are made throughout.

**47CSR59 – Monitoring Well Rule.** Promulgated last in 1994. The proposed revisions add new language to incorporate "high" and "low" risk boreholes, experience requirements for those persons applying for monitoring well driller certificates, recertification and training requirements for monitoring well drillers, and definitions. Technical revisions and corrections are made throughout.

**47CSR60 – Monitoring Well Design Standards.** Promulgated last in 1996. The proposed revisions bring this rule in conformance with the 47CSR59 *Monitoring Well Rule* definition changes, and "high" and "low" borehole requirements. Technical revisions and corrections are made throughout.

## **DIVISION OF WATER & WASTE MANAGEMENT – WASTE MANAGEMENT RULES**

**33CSR1 – Solid Waste Management Rule:** Promulgated last in 2006. The proposed revisions include removing the requirement that free day tonnage count toward monthly/daily totals and clarifying the definition of pick-up truck. Technical revisions and corrections are made throughout.

**33CSR20 – Hazardous Waste Management System:** Promulgated last in 2009. The proposed rule reflects the annual incorporation-by-reference (IBR) revisions made by DEP to its hazardous waste rule. The proposed revisions include changes to the academic laboratory waste provisions to allow alternative requirements for hazardous waste determination and accumulation of unwanted materials at labs owned by and affiliated with colleges and universities. Other proposed revisions are directed at the hazardous waste code 019 provisions, which expand the exclusion for sludges generated from the chemical conversion coating of aluminum using a zinc phosphating process. The F019 waste code exclusion only applies to the automobile or light truck manufacturing industry. This IBR specifically excludes two federal amendments that are currently undergoing reconsideration by the EPA, *i.e.*, revisions to the definition of solid waste and expansion of RCRA comparable fuel exclusion. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the seven DWWM rules. Mr. Raney inquired about the impetus for the change in the monitoring well rules, since they have not been revised in several years. Ms. Boggs responded that the changes in the rules reflect changes in technology and practice over time. There were no further questions from the Council.

## **OFFICE OF OIL AND GAS RULE**

**35CSR4 – Oil & Gas Wells and Other Wells:** Promulgated last in 2001. The proposed revisions include updating the permit fees to reflect the 2005 statutory change, clarifying general requirements for pit and impoundment construction, and adding a new section setting forth requirements for constructing pits and impoundments that exceed a certain size. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the OOG rule. Dr. Harris expressed concern that the current statutory bond amount may not suffice given the larger pits associated with Marcellus wells. Mr. Martin explained that the bond is a performance bond, not designed to cover any specific area of the well operation. Dr. Harris then asked about protections for surface owners whose water supply is impaired from drilling operations, in response to which Mr. Martin pointed out the statutory and regulatory remedies. There were no further questions from the Council.

## **DIVISION OF MINING & RECLAMATION RULE**

**47CSR30 – Mining NPDES Rule:** Promulgated last in 2009. The proposed revisions include deleting the certification language for NPDES maps and decreasing from two years to one the raw mine drainage water quality data required for abandonment of a deep mine. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the DMR rule. Ms. Dooley inquired whether the changes were substantive or merely technical. Ms. Boggs explained that although the changes appeared merely technical, they had real-world effects upon licensed professional engineers and surveyors, whom the rule required to swear to the contents of a NPDES map under penalty of perjury. Engineers and surveyors could not obtain insurance for such an oath, because they did not create the maps and were therefore subjecting themselves to criminal penalties for work that was not entirely within their control. There were no further questions from the Council.

#### **DIVISION OF AIR QUALITY RULES**

**45CSR8 – *Ambient Air Quality Standards*:** Promulgated last in 2009. The proposed revisions include deletion of redundant measurement method language for lead and addition of new national primary and secondary ambient air quality standards for lead.

**45CSR14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration*:** Promulgated last in 2009. The proposed revisions incorporate the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers. Other miscellaneous revisions and corrections are also included, so that the rule comports with federal counterpart language.

**45CSR16 – *Standards of Performance for New Stationary Sources*:** Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to New Source Performance Standards, including Stationary Spark-Ignition Internal Combustion Engines, Fossil Fuel-Fired Steam Generators and Industrial-Commercial-Institutional Steam Generating Units, Stationary Combustion Turbines, Nonroad Spark Ignition Engines, Alternative Work Practice To Detect Leaks From Equipment, Petroleum Refineries and Performance Specification 16 for Predictive Emissions Monitoring Systems, Amendments to Testing and Monitoring Provisions, and Nonmetallic Mineral Processing Plants. The IBR exclusion for the vacated Clean Air Mercury Rule has been removed.

**45CSR19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment*:** Promulgated last in 2005. The proposed revisions incorporate the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers, Reasonable Possibility in Recordkeeping, Ethanol Production Facilities, and 8-Hour Ozone National Ambient Air Quality Standard provisions. Other proposed revisions to the rule remove references to pollution control projects and clean units per the 2005 decision by the United State Court of Appeals for the District of Columbia Circuit that vacated the parallel federal provisions. Other miscellaneous revisions and/or corrections are also included, so that the rule comports with federal counterpart language.

**45CSR25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities*:** Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to the Hazardous Waste rule.

**45CSR33 – *Acid Rain Provisions and Permits*:** Promulgated last in 2006. The proposed rule

reflects the annual IBR revisions, including Air Pollution Control, Transport of Emissions of Nitrogen Oxide and Sulfur Dioxide; Amendments to Monitoring Provisions; Revisions to Acid Rain Program Rules, and Revisions to the Continuous Monitoring Rule for the Acid Rain Program.

**45CSR34 – *Emission Standards for Hazardous Air Pollutants*:** Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to the Hazardous Air Pollutant rule. Excluded from incorporation by reference are the national emission standards for hazardous air pollutants affecting non-major (area) sources of hazardous air pollutants for Iron and Steel Foundries, Plating and Polishing Operations, Ferroalloys Production Facilities, and Metal Fabrication and Finishing Source Categories.

Mr. Franks asked whether the Council had any questions about the seven DAQ Rules, and there were none.

On general comment, Dr. Harris inquired about water quality standards for mercury, citing a newspaper report that DEP supported less stringent standards based on data that State residents consume relatively fewer fish per capita. Mr. Clarke explained the factual context of the reported quote and the method by which EPA developed the point three (0.3) standard. With respect to the rules presentation, Dr. Harris suggested a return to the practice of providing Council with written summaries of the proposed rules, along with justifications for the proposed changes. The suggestion was well-received.

Mr. Franks then opened the floor to questions from the general public. Don Garvin, Legislative Coordinator for the West Virginia Environmental Council, inquired about acid rain standards, to which Mr. Mason responded that the State's standards with respect to acid rain derive from Title VI of the federal Clean Air Act.

Dr. Harris then asked whether the downturn in the energy market has caused any decrease in the number of permit applications to drill gas wells in the Marcellus Shale. Mr. Martin responded that the economy has had some effect on the number of permit applications overall, and that he could later provide Dr. Harris with more precise statistics.

Mr. Garvin complimented the Agency and the Office of Oil & Gas on finally requiring pits to be lined. Mr. Raney then thanked DEP staff for their hard work on the rules.

With no further comments forthcoming from the Council or public, Mr. Franks reminded everyone that the next meeting is scheduled for Wednesday, September 23, 2009. On motion from Mr. Raney, seconded by Mr. Roberts, Mr. Franks declared the meeting adjourned at 2:45 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 57<sup>th</sup> Street SE  
Charleston, WV 25304

Phone Number: 926-0475

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.

<b>FISCAL YEAR</b>			
Effect of Proposal	2010 Increase/Decrease (use "-")	2011 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>
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
<b>2. Estimated Total Revenues</b>	<b>0</b>	<b>0</b>	<b>0</b>

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.

[Empty box for memorandum content]

Date: 6/11/07

[Signature]  
Signature of Agency Head

FILED

2009 JUL 28 PM 4:34

TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
~~OFFICE OF AIR QUALITY~~

OFFICE WEST VIRGINIA  
DEPT OF STATE

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. -- ~~May 20, 2005~~.

1.4. Effective Date. -- ~~June 1, 2005~~.

1.5. 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 ~~July 7, 1993~~ May 20, 2005 and became effective ~~July 7, 1993~~ June 1, 2005.

**§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

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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.

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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 Part 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

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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.] "Clean Unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, that is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to regulations approved by the Administrator in accordance with section 14, or any emissions unit that has been designated by the Secretary as a Clean Unit, based on the criteria in subdivisions 15.3.a through 15.3.d, using a plan-approved permitting process, or any emissions unit that has been designated as a Clean Unit pursuant to 45CSR14, subdivisions 26.3.a through 26.3.d.~~

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<sub>2</sub> or CO<sub>2</sub> 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 is not a new unit as defined above 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<sub>2</sub> reductions, or coke plant particulate matter may not be offset against boiler fly ash, or NO<sub>x</sub> 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.

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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 section §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 ~~2.66~~; 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 section §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;

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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.] The addition, replacement, or use of a PCP, as defined in subsection 2.53, at an existing emissions unit meeting the requirements of section 22. A replacement control technology must provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.~~

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<sub>x</sub>.

— 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, or 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;

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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<sub>10</sub> in any serious nonattainment area for PM<sub>10</sub>;

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.b. 2.35.c. Any physical change that would occur at a stationary source not qualifying under subdivision 2.35.a. above 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.c. Notwithstanding the major source size specified in subdivision 2.35.a, the following source sizes are also defined as major stationary sources:~~

~~— 2.35.c.1. In serious ozone nonattainment areas, sources which emit or have the potential to emit 50 tons per year or more of VOC or 50 tons per year or more of NO<sub>x</sub>;~~

~~— 2.35.c.2. In severe ozone nonattainment areas, sources which emit or have the potential to emit 25 tons per year or more of VOC or 25 tons per year or more of NO<sub>x</sub>;~~

~~— 2.35.c.3. In extreme ozone nonattainment areas, sources which emit or have the potential to emit 10 tons per year or more of VOC or 10 tons per year or more of NO<sub>x</sub>;~~

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~~2.35.c.4. In serious carbon monoxide nonattainment areas, sources which emit or have the potential to emit 50 tons per year or more of carbon monoxide:~~

~~2.35.c.5. In serious PM<sub>10</sub> nonattainment areas, sources which emit or have the potential to emit 70 tons per year or more of PM<sub>10</sub> or PM<sub>10</sub> precursors.~~

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 ~~subdivision~~ 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;

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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 section §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 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.

2.36. "Major Stationary Source for Ozone" means a major stationary source of VOC or NO<sub>x</sub>.

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

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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.2.C. The increase or decrease in emissions did not occur at a Clean Unit, except as provided in subsections 20.8 and 21.10.~~

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. The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under 45CSR14-26 or under regulations approved pursuant to 40 CFR §§51.165(d) or 51.166(u). Once an emissions unit has been designated as a Clean Unit, the owner or operator cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to section 22 or for a Clean Unit designation are creditable to the extent they meet the requirements in subdivision 22.6.d. for the PCP and subsections 20.8 and 21.10 for a Clean Unit.~~

~~2.39.b.6.~~ 2.39.b.5. An increase that results from a physical change at a source occurs when the

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emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement 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 section §107 of the CAA as not having attained NAAQS for specific air pollutants. Nonattainment areas for ozone, carbon monoxide, and PM<sub>10</sub> 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<sub>10</sub> 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<sub>10</sub>" 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.] "Pollution control project" or "PCP" means any activity, set of work practices or project, including pollution prevention as defined under subsection 2.54, undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in subdivisions 2.53.a through 2.53.f are presumed to be environmentally beneficial pursuant to subdivision 22.2.a. Projects not listed in the following subdivisions may qualify for a case-specific PCP exclusion pursuant to the requirements of subsections 22.2 and 22.5:~~

~~2.53.a. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO<sub>2</sub>;~~

~~2.53.b. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants;~~

~~2.53.c. Flue gas recirculation, low-NO<sub>x</sub> burners or combustors, selective non-catalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO<sub>x</sub>;~~

~~2.53.d. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. "Hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide;~~

~~2.53.e. Activities or projects undertaken to accommodate switching, or partially switching, to an inherently less polluting fuel, to be limited to the following fuel switches:~~

~~2.53.e.1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05 percent sulfur diesel (i.e., from a higher sulfur content number 2 fuel or from number 6 fuel, to CA 0.05 percent sulfur number 2 diesel);~~

~~2.53.e.2. Switching from coal, oil, or any solid fuel to natural gas, propane or gasified coal;~~

~~2.53.e.3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood and other forms of "unclean" wood;~~

~~2.53.e.4. Switching from coal to number 2 fuel oil (0.5 percent maximum sulfur content); and~~

~~2.53.e.5. Switching from high sulfur coal to low sulfur coal (maximum 1.2 percent sulfur content); and~~

~~2.53.f. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:~~

~~2.53.f.1. The productive capacity of the equipment is not increased as a result of the activity or project; and~~

~~2.53.f.2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, follow the procedure in subparagraphs 2.53.f.2.A through 2.53.f.2.D:~~

~~2.53.f.2.A. Determine the ODP of the substances by consulting 40 CFR Part 82, subpart A, appendices A and B;~~

~~2.53.f.2.B. Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS;~~

~~2.53.f.2.C. Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP; and~~

~~2.53.f.2.D. If the value calculated in subparagraph 2.53.f.2.B is more than the value calculated~~

in subparagraph 2.53.f.2.C, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.

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<sub>2</sub> or CO<sub>2</sub> 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~~ Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

2.61.b. ~~volatile organic compounds and nitrogen~~ Nitrogen oxides or any volatile organic compounds;  
and

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 a 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<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas.

2.61.c.3. Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> 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<sub>2.5</sub> concentrations.

2.61.c.4. Volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> 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<sub>2.5</sub> concentrations.

2.61.d. PM<sub>2.5</sub> emissions and PM<sub>10</sub> 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<sub>2.5</sub> and PM<sub>10</sub> in nonattainment major NSR permits. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> 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

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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.

~~2.62.~~ 2.63. "Reviewing authority" means the Secretary of the Department of Environmental Protection.

~~2.63.~~ 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.

~~2.64.~~ 2.65. "Secretary" means the Secretary of the Division of Environmental Protection or his or her designated representative.

~~2.65.~~ 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 for such pollutants listed in Table 45-19A:

<u>Pollutant and Pollutant Emission Rate</u> <u>(tons per year)</u>	
<u>Carbon monoxide:</u>	<u>100 tpy</u>
<u>Nitrogen oxides:</u>	<u>40 tpy</u>
<u>Sulfur dioxide:</u>	<u>40 tpy</u>
<u>Ozone:</u>	<u>40 tpy</u> <u>of VOC or NO<sub>x</sub></u>
<u>Lead:</u>	<u>0.6 tpy</u>

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<u>PM<sub>10</sub></u> :	15 tpy
<u>PM<sub>2.5</sub></u> :	10 tpy of direct PM <sub>2.5</sub> emissions
<u>PM<sub>2.5</sub></u> :	40 tpy of SO <sub>2</sub> emissions
<u>PM<sub>2.5</sub></u> :	40 tpy of NO <sub>x</sub> emissions
<u>(unless demonstrated not to be a PM<sub>2.5</sub> precursor under subsection 2.61).</u>	

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.

~~2.66:~~ 2.67. “Significant emissions increase” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

~~2.67:~~ 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 ~~2.65~~ 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.

~~2.68:~~ 2.69. “Significant Impact” means an increase in the ambient air concentration for a particular pollutant as listed in Table 45-19B; follows:

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Averaging time (hours)					
	<u>Annual</u>	<u>24</u>	<u>8</u>	<u>3</u>	<u>1</u>
Ambient Air Concentration Increase ( $\mu\text{g}/\text{m}^3$ )					
<u>SO<sub>2</sub></u>	<u>1.0</u>	<u>5.0</u>		<u>25.0</u>	
<u>PM<sub>10</sub></u>	<u>1.0</u>	<u>5.0</u>			
<u>NO<sub>2</sub></u>	<u>1.0</u>				
<u>TSP</u>	<u>1.0</u>	<u>5.0</u>			
Ambient Air Concentration Increase ( $\text{mg}/\text{m}^3$ )					
<u>CO</u>			<u>0.5</u>		<u>2.0</u>

~~2.69:~~ 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 ~~2.65~~ 2.66 or the CAA, whichever is lower.

~~2.70:~~ 2.71. "Source, Stationary Source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant.

~~2.71:~~ 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.

~~2.72:~~ 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.

~~2.73:~~ 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.

~~2.74:~~ 2.75. "USEPA" means the United States Environmental Protection Agency.

~~2.75:~~ 2.76. "Volatile organic compounds (VOC)" are as defined in 40 CFR §51.100(s).

~~2.76:~~ 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.

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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 ~~2.66~~ 2.67), and a significant net emissions increase (as defined in subsections ~~2.65~~ 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.] Emission test for projects that involve Clean Units. -- For a project that will be constructed and operated at a Clean Unit, as designated in accordance with the provisions of sections 20 and 21, without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.~~

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.e~~ 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. For example, if a project involves both an existing emissions unit and a Clean Unit, as designated in accordance with the provisions of sections 20 and 21, the projected increase is determined by summing the values determined using the method specified in subdivision 3.4.c for the existing unit and using the method specified in subdivision 3.4.e for the Clean Unit.

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.] An owner or operator undertaking a PCP, as defined in subsection 2.53, shall comply with the requirements under section 22.~~

### 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;

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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.18.~~ 3.7.a.17. Fuel conversion plants;

~~3.7.a.19.~~ 3.7.a.18. Sintering plants;

~~3.7.a.20.~~ 3.7.a.19. Secondary metal production plants;

~~3.7.a.21.~~ 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.22.~~ 3.7.a.21. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

~~23.3.7.a.23.~~ 3.7.a.22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

~~3.7.a.24.~~ 3.7.a.23. Taconite ore processing plants;

~~3.7.a.25.~~ 3.7.a.24. Glass fiber processing plants;

~~3.7.a.26.~~ 3.7.a.25. Charcoal production plants;

~~3.7.a.27.~~ 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.28.~~ 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 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.

**§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<sub>x</sub> 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<sub>x</sub>. 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 source emission unit or curtailing production or operating hours ~~below baseline levels~~ may be generally credited for offsets if they meet the following requirements:

7.4.a. Such reductions are permanent, quantifiable, federally enforceable, ~~and enforceable by the Secretary within a permit or order and if the area has an approved attainment plan.~~

7.4.b. ~~The shutdown or curtailment is creditable only if it 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. The Secretary may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources; and~~

~~7.4.b. Such reductions may be credited in the absence of an approved attainment demonstration only if the~~

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 new source construction permit application is filed, or, if the

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

~~7.4.c. No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some future date, shall be allowed unless the permit contains conditions~~

~~requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.~~

~~7.5:~~ 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).

~~7.6:~~ 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<sub>x</sub> 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<sub>2</sub>), 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<sub>2</sub> 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.

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8.5.b. Atmospheric simulation modeling for ozone impacts is not necessary for volatile organic compounds and NO<sub>x</sub>. 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<sub>x</sub> locating in a designated nonattainment area for ozone shall be subject to the provisions of section 4.

8.5.d. Proposed VOC or NO<sub>x</sub> 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. Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a Clean Unit or a project as a PCP cannot be used as offsets.~~

~~8.8. Decreases in actual emissions occurring at a Clean Unit cannot be used as offsets, except as provided in subsections 20.8 and 21.10. Similarly, decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in subdivision 22.6.d.~~

~~8.9:~~ 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

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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 section §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

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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.

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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. ~~The Except as otherwise provided in subdivision 17.4.f, the following specific provisions apply to with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source, other than projects at a clean unit or 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 calculates the difference between projected actual emissions, using elects to use the method specified in subdivisions 2.59.a through 2.59.c prior to any demand growth adjustment under subdivision 2.59.c, and baseline actual emissions and the difference in emissions exceeds the level that is considered to be significant for the air pollutant 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 may 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 ~~department~~ 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<sub>x</sub> 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 USEPA Administrator.

**§45-19-20. [Reserved.] Clean Unit Test for Emissions that are Subject to LAER.**

~~20.1. Applicability. -- The provisions of this section apply to any emissions unit for which the Secretary has issued a major NSR permit within the past 10 years.~~

~~20.2. General provisions for Clean Units. -- The provisions in subdivisions 20.2.a through 20.2.e apply to a Clean Unit.~~

~~20.2.a. Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with subsection 20.4, and before the expiration date, as determined in accordance with subsection 20.5, will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~20.2.b. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision 20.6.d, the emissions unit remains a Clean Unit.~~

~~20.2.c. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision 20.6.d, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit requalifies as a Clean Unit pursuant to subdivision 20.3.c. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~20.2.d. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of subdivisions 3.4.a through 3.4.d and subdivision 3.4.f as if the emissions unit is not a Clean Unit.~~

~~20.2.e. Certain Emissions Units with PSD permits. -- For emissions units that meet the requirements of paragraphs 20.2.e.1 and 20.2.e.2, the BACT level of emissions reductions and/or work practice requirements shall satisfy the requirement for LAER in meeting the requirements for Clean Units under subsections 20.3 through 20.8. For these emissions units, all requirements for the LAER determination under subdivisions 20.2.a and 20.2.b shall also apply to the BACT permit terms and conditions. Additionally, the requirements of paragraph 20.7.a.2 do not apply to emissions units that qualify for Clean Unit status under this subdivision 20.2.e.~~

~~20.2.e.1. The emissions unit must have received a PSD permit within the last 10 years and such permit must require the emissions unit to comply with BACT.~~

~~20.2.e.2. The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutant(s) after issuance of the PSD permit and before the effective date of the Clean Unit test provisions in the area.~~

~~20.3. Qualifying or re-qualifying to use the Clean Unit applicability test. -- An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 20.3.a and 20.3.b. After the original Clean Unit designation expires in accordance with subsection 20.5 or is lost pursuant to subdivision 20.2.c, such emissions unit may re-qualify as a Clean Unit under either subdivision 20.3.c, or under the Clean Unit provisions in section 22. To re-qualify as a Clean Unit under subdivision 20.3.c, the emissions unit must obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all the criteria in subdivision 20.3.c. Clean Unit designation applies individually for each pollutant emitted by the emissions unit.~~

~~20.3.a. Permitting requirement. -- The emissions unit must have received a major NSR permit within the past 10 years. The owner or operator must maintain, and be able to provide, information that would demonstrate that this permitting requirement is met.~~

~~20.3.b. Qualifying air pollution control technologies. -- Air pollutant emissions from the emissions unit must be reduced through the use of an air pollution control technology, which includes pollution prevention as defined under subsection 2.54, or work practices that meet both the requirements in paragraphs 20.3.b.1 and 20.3.b.2.~~

~~20.3.b.1. The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for Clean Unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.~~

~~20.3.b.2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.~~

~~20.3.b.3. Re-qualifying for the Clean Unit designation. -- The emissions unit must obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit must meet the requirements in subdivisions 20.3.a and 20.3.b.~~

~~20.4. Effective date of the Clean Unit designation. -- The effective date of an emissions unit's Clean Unit designation, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification, is determined according to the applicable subdivision 20.4.a or 20.4.b.~~

~~20.4.a. Original Clean Unit designation, and emissions units that re-qualify as Clean Units by implementing a new control technology to meet current-day LAER. -- The effective date is the date the emissions unit's air pollution control technology is placed into service, or 3 years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the date that provisions for the Clean Unit applicability test are approved by the Administrator for incorporation into the State Implementation Plan (SIP) and become effective for the State in which the unit is located.~~

~~20.4.b. Emissions units that re-qualify for the Clean Unit designation using an existing control technology. -- The effective date is the date the new, major NSR permit is issued.~~

~~20.5. Clean Unit expiration. -- An emissions unit's Clean Unit designation expires on the date set forth in subdivision 20.5.a or 20.5.b, as applicable. The owner or operator may no longer use the Clean Unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification after the Clean Unit expiration date.~~

~~20.5.a. Original Clean Unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day LAER. -- For any emissions unit that automatically qualifies as a Clean Unit under subdivisions 20.3.a and 20.3.b, the Clean Unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining Clean Unit designation in subsection 20.7.~~

~~20.5.b. Emissions units that re-qualify for the Clean Unit designation using an existing control technology. -- For any emissions unit that re-qualifies as a Clean Unit under subdivision 20.3.c, the Clean Unit designation expires 10 years after the effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation as set forth in subsection 20.7.~~

~~20.6. Required title V permit content for a Clean Unit. -- After the effective date of the Clean Unit designation, and in accordance with 40CSR30, but no later than when the title V permit is renewed, the title V permit for the major stationary source must include the terms and conditions in subdivisions 20.6.a through 20.6.f related to the Clean Unit.~~

~~20.6.a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this Clean Unit designation applies.~~

~~20.6.b. Effective date of the Clean Unit designation. -- If this date is not known when the Clean Unit designation is initially recorded in the title V permit, e.g., because the air pollution control technology is not yet in service, the permit must describe the event that will determine the effective date, e.g., the date the control technology is placed into service. Once the effective date is determined, the owner or operator must notify the Secretary of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~20.6.c. Expiration date of the Clean Unit designation. -- If this date is not known when the Clean Unit designation is initially recorded into the title V permit, e.g., because the air pollution control technology is not yet in service, then the permit must describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is determined, the owner or operator must notify the Secretary of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~20.6.d. All emission limitations and work practice requirements adopted in conjunction with the LAER, and any physical or operational characteristics that formed the basis for the LAER determination, e.g., possibly the emissions unit's capacity or throughput.~~

~~20.6.e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation.~~

~~20.6.f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, pursuant to subsection 20.7.~~

~~20.7. Maintaining the Clean Unit designation. -- To maintain the Clean Unit designation, the owner or operator must conform to all the restrictions listed in subdivisions 20.7.a through 20.7.c. Conformance applies independently to each pollutant for which the emissions unit has the Clean Unit designation. Failing to conform to the restrictions for one pollutant affects Clean Unit designation only for that pollutant.~~

~~20.7.a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit, and subsequently reflected in the title V permit.~~

~~20.7.a.1. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination, such as the emissions unit's capacity or throughput.~~

~~20.7.a.2. The Clean Unit may not emit above a level that has been offset.~~

~~20.7.b. The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.~~

~~20.7.c. The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation shall end.~~

~~20.8. Offsets and netting at Clean Units. -- Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase, or be used for generating offsets unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emission limitation if such reductions are surplus, quantifiable and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.~~

~~20.9. Effect of redesignation of attainment status on the Clean Unit designation. -- The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it must requalify under the requirements that are currently applicable in the area.~~

~~§45-19-21. [Reserved.] Clean Unit Provisions for Emissions Units that Achieve an Emission~~

**Limitation Comparable to LAER:**

~~—21.1. Applicability.—The provisions of this section apply to emissions units which do not qualify as Clean Units under section 20, but which are achieving a level of emissions control comparable to LAER, as determined by the Secretary in accordance with this section.~~

~~—21.2. General provisions for Clean Units.—The provisions in subdivisions 21.2.a through 21.2.d apply to a Clean Unit, designated under this section.~~

~~—21.2.a.—Any project for which the owner or operator begins actual construction after the effective date of the Clean Unit designation, as determined in accordance with subsection 21.5, and before the expiration date, as determined in accordance with subsection 21.6, will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~—21.2.b.—If a project at a Clean Unit does not cause the need for a revision in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subsection 21.4, to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision 21.8.d, the emissions unit remains a Clean Unit.~~

~~—21.2.c.—If a project causes the need for a revision in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to subsection 21.4, to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision 21.8.d, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions, unless the unit re-qualifies as a Clean Unit pursuant to subdivision 21.3.d. If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~—21.2.d.—A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of subdivisions 3.2.a through 3.2.d and subdivision 3.2.f as if the emissions unit was never a Clean Unit.~~

~~—21.3. Qualifying or re-qualifying to use the Clean Unit applicability test.—An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivisions 21.3.a through 21.3.c. After the original Clean Unit designation expires in accordance with subsection 21.6 or is lost pursuant to subdivision 21.2.c, such emissions unit may re-qualify as a Clean Unit under either subdivision 21.3.d, or under the Clean Unit provisions in section 20. To re-qualify as a Clean Unit under subdivision 21.3.d, the emissions unit must obtain a new permit issued pursuant to the requirements in subsections 21.7 and 21.8 and meet all the criteria in subdivision 21.3.d. The Secretary will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.~~

~~—21.3.a. Qualifying air pollution control technologies.—Air pollutant emissions from the emissions unit must be reduced through the use of air pollution control technology, which includes pollution prevention as defined under subsection 2.54 or work practices, that meets both the following requirements in paragraphs 21.3.a.1 and 21.3.a.2:~~

~~21.3.a.1. The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subsection 21.4. However, the emissions unit is not eligible for the Clean Unit designation if its emissions are not reduced below the level of a standard; uncontrolled emissions unit of the same type, e.g., if the LAER determinations to which it is compared have resulted in a determination that no control measures are required.~~

~~21.3.a.2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~21.3.b. Impact of emissions from the unit. -- The Secretary must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or adversely impact an air quality related value, such as visibility, 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.~~

~~21.3.c. Date of installation. -- An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the effective date of EPA approval and promulgation of a revision to the WV State Implementation Plan (SIP) incorporating this rule. However, for such emissions units, the owner or operator must apply for the Clean Unit designation within 2 years after the effective date of EPA approval and promulgation of a revision to the WV State Implementation Plan (SIP) incorporating this rule. For technologies installed after the effective date of EPA approval and promulgation of a revision to the WV State Implementation Plan (SIP) incorporating this rule, the owner or operator must apply for the Clean Unit designation at the time the control technology is installed.~~

~~21.3.d. Re-qualifying as a Clean Unit. -- The emissions unit must obtain a new permit, pursuant to requirements in subsections 21.7 and 21.8, that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit must meet the requirements in paragraph 21.3.a.1 and subdivision 21.3.b.~~

~~21.4. Demonstrating control effectiveness comparable to LAER. -- The owner or operator may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of subdivision 21.3.a according to either subdivision 21.4.a or 42.4.b. Subdivision 21.4.c specifies the time for making this comparison.~~

~~21.4.a. Comparison to previous LAER determinations. -- The administrator maintains an on-line data base of previous determinations of RACT, BACT, and LAER in the RACT/BACT/LAER Clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as any one of the five best-performing similar sources for which a LAER determination has been made within the preceding 5 years, and for which information has been entered into the RBLC. The Secretary shall also compare this presumption to any additional LAER determinations of which it is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to LAER is correct.~~

~~21.4.b. The substantially-as-effective test. -- The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may~~

present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection 21.7. The Secretary shall consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

~~21.4.c. Time of comparison.~~

~~21.4.c.1. Emissions units with control technologies that are installed before the effective date of EPA approval and promulgation of a revision to the WV State Implementation Plan (SIP) incorporating this rule. -- The owner or operator of an emissions unit whose control technology is installed before the effective date of EPA approval and promulgation of a revision to the WV State Implementation Plan (SIP) incorporating this rule may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements. The expiration date of the Clean Unit designation will depend on which option the owner or operator uses, as specified in subsection 21.6.~~

~~21.4.c.2. Emissions units with control technologies that are installed after the effective date of EPA approval and promulgation of a revision to the WV State Implementation Plan (SIP) incorporating this rule. -- The owner or operator must demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.~~

~~21.5. Effective date of the Clean Unit designation. -- The effective date of an emissions unit's Clean Unit designation (that is, the date on which the owner or operator may begin to use the Clean Unit Test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection 21.7 is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.~~

~~21.6. Clean Unit expiration. -- If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, then the Clean Unit designation expires 10 years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires 10 years from the effective date of the Clean Unit designation, as determined according to subsection 21.5. In addition, for all emissions units, the Clean Unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the Clean Unit designation in subsection 21.9.~~

~~21.7. Procedures for designating emissions units as Clean Units. -- The Secretary shall designate an emissions unit a Clean Unit only by issuing a permit pursuant to 45CSR13, including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit must also meet the requirements in subsection 21.8.~~

~~21.8. Required permit content. -- The permit required by section 21.7 shall include the terms and conditions set forth in subdivision 21.8.a through 21.8.f. Such terms and conditions shall be incorporated into the major stationary source's title V permit in accordance with the provisions of 45CSR30 approved pursuant to 40 CFR Part 70, but no later than when the title V permit is renewed.~~

~~21.8.a. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutant(s) for which this designation applies.~~

~~21.8.b. The effective date of the Clean Unit designation. -- If this date is not known when the Secretary issues the permit, e.g., because the air pollution control technology is not yet in service, then the permit must describe the event that will determine the effective date, e.g., the date the control technology is placed into service. Once the effective date is known, then the owner or operator must notify the Secretary of the exact date. This specific effective date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~21.8.c. The expiration date of the Clean Unit designation. -- If this date is not known when the Secretary issues the permit, e.g., because the air pollution control technology is not yet in service, then the permit must describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is known, then the owner or operator must notify the Secretary of the exact date. The expiration date must be added to the source's title V permit at the first opportunity, such as a modification, revision, reopening, or renewal of the title V permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~21.8.d. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER, such as the emissions unit's capacity or throughput.~~

~~21.8.e. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation.~~

~~21.8.f. Terms reflecting the owner or operator's duties to maintain the Clean Unit designation and the consequences of failing to do so, pursuant to subsection 21.9.~~

~~21.9. Maintaining Clean Unit designation. -- To maintain Clean Unit designation, the owner or operator must conform to all the restrictions listed in subdivisions 21.9.a through 21.9.e. This subdivision applies independently to each pollutant for which the Secretary has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.~~

~~21.9.a. The Clean Unit must comply with the emission limitation(s) and/or work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.~~

~~21.9.b. The owner or operator may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER, such as the emissions unit's capacity or throughput.~~

~~21.9.c. The Clean Unit may not emit above a level that has been offset.~~

~~21.9.d. The Clean Unit must comply with any terms and conditions in the title V permit related to the unit's Clean Unit designation.~~

~~21.9.e.~~ The Clean Unit must continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

~~21.10.~~ Offsets and Netting at Clean Units. -- Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase, or be used for generating offsets unless such use occurs before the effective date of EPA approval and promulgation of a revision to the WV State Implementation Plan (SIP) incorporating this rule or after the Clean Unit designation expires, or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner or operator may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

~~21.11.~~ Effect of redesignation on the Clean Unit designation. -- The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to subdivision 20.2.c and 21.2.c, it must re-qualify under the requirements that are currently applicable.

#### **§45-19-22. [Reserved.] PCP Exclusion Procedural Requirements:**

~~22.1.~~ Before an owner or operator begins actual construction of a PCP, the owner or operator must either submit a notice to the Secretary if the project is listed in subdivisions 2.53.a through 2.53.f, or if the project is not listed in subdivisions 2.53.a through 2.53.f, then the owner or operator must submit a permit application pursuant to 45CSR13 and obtain approval to use the PCP exclusion from the Secretary consistent with the requirements in subsection 22.5. Regardless of whether the owner or operator submits a notice or a permit application, the project must meet the requirements in subsection 22.2, and the notice or permit application must contain the information required in subsection 22.3.

~~22.2.~~ Any project that relies on the PCP exclusion must meet the requirements in subdivisions 22.2.a and 22.2.b.

~~22.2.a.~~ Environmentally beneficial analysis. -- The environmental benefit from the emission reductions of pollutants regulated under the CAA must outweigh the environmental detriment of emissions increases in pollutants regulated under the CAA. A statement that a technology from subdivisions 2.53.a through 2.53.f is being used shall be presumed to satisfy this requirement.

~~22.2.b.~~ Air quality analysis. -- The emissions increases from the project will not cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or adversely impact an air quality related value, such as visibility, 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.

~~22.3.~~ Content of notice or permit application. -- In the notice or permit application sent to the Secretary, the owner or operator must include, at a minimum, the information listed in subdivisions 22.3.a through

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22.3.c.

~~22.3.a. A description of the project.~~

~~22.3.b. The potential emissions increases and decreases of any pollutant regulated under the CAA and the projected emissions increases and decreases using the methodology in subsection 3.2, that will result from the project, and a copy of the environmentally beneficial analysis required by subdivision 22.2.a.~~

~~22.3.c. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in 45CSR30.~~

~~22.3.d. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subdivisions 22.2.a and 22.2.b, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~22.3.e. Demonstration that the PCP will not have an adverse air quality impact, e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise, as required by subdivision 22.2.b. An air quality impact analysis is not required for any pollutant which will not experience a significant emissions increase as a result of the project.~~

~~22.4. Notice process for listed projects. -- For projects listed in subdivisions 2.53.a through 2.53.f, the owner or operator may begin actual construction of the project immediately after notice is sent to the Secretary, unless otherwise prohibited under requirements of 45CSR13 or 45CSR14. The owner or operator shall respond to any requests by the Secretary for additional information that the Secretary determines is necessary to evaluate the suitability of the project for the PCP exclusion.~~

~~22.5. Permit process for unlisted projects. -- Before an owner or operator may begin actual construction of a PCP project that is not listed in subdivisions 2.53.a through 2.53.f, the project must be approved by the Secretary and recorded in a permit issued pursuant to 45CSR13 or 45CSR30. This includes the requirement that the Secretary provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the Administrator to submit comments. The Secretary must address all material comments received by the end of the comment period before taking final action on the permit.~~

~~22.6. Operational requirements. -- Upon installation of the PCP, the owner or operator must comply with the requirements of subdivision 22.6.a through 22.6.c.~~

~~22.6.a. General duty. -- The owner or operator must operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subdivision 22.2.a and 22.2.b, with information submitted in the notice or permit application required by subsection 22.3, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

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~~22.6.b. Recordkeeping. -- The owner or operator must maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision 22.6.a.~~

~~22.6.c. Permit requirements. -- The owner or operator must comply with any provisions in the 45CSR13 permit or title V permit related to use and approval of the PCP exclusion.~~

~~22.6.d. Generation of emission reduction credits. -- Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion, such as taking an operational restriction on the hours of operation. The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if such reductions are surplus, quantifiable and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.~~

### §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 ~~NOX~~ NO<sub>x</sub> 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.

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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.

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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. The 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 ~~2.65~~ 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

#### 45CSR19

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

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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.

## 45CSR19

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

## 45CSR19

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 EPA 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.**

**45CSR19**

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.

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TABLE 45-19A

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy
PM <sub>10</sub> :	15 tpy
Ozone, marginal and moderate nonattainment areas	40 tpy of VOC or NOx
Ozone, serious and severe nonattainment areas	25 tons of VOC or NOx determined over a consecutive 5 year period
Ozone, zero extreme nonattainment areas	tons of VOC or NOx
Lead:	0.6 tpy

TABLE 45-19B

Pollutant:	Averaging time (hours)			
	Annual	24	8	3
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>		25.0 µg/m <sup>3</sup>
TSP	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>		
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>		
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>			
CO			0.5 mg/m <sup>3</sup>	2.0 mg/m <sup>3</sup>

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

IN THE MATTER OF:

PROPOSED 2010 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 on the 13<sup>th</sup>  
day of July, 2009, commencing at 6:14 p.m. and concluding  
at 6:15 p.m., at 601 57<sup>th</sup> Street, S.E., Charleston, Kanawha  
County, West Virginia, pursuant to notice to all interested  
parties.

BEFORE: JAMES L. MASON, Technical Analyst  
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

Reporter's Certificate.....Page 5

1           MR. MASON:       This public hearing will now come  
2 to order on this 13<sup>th</sup> day of July, 2009, at the West  
3 Virginia Department of Environmental Protection  
4 Headquarters. Comments and testimony will be accepted  
5 until the close of this hearing and will be made part of  
6 the rule-making record. Any question regarding revisions  
7 to the rules will be included with your comments, and any  
8 such question will be answered as part of the response to  
9 comments in the rule-making record.

10                       The purpose of this public hearing is to  
11 satisfy state rule-making requirements by accepting  
12 comments on proposed revisions to rule 45CSR19 - *Permits*  
13 *for Construction and Major Modification of Major Stationary*  
14 *Sources of Air Pollution Which Cause or Contribute to*  
15 *Nonattainment*. Revisions to the rule add new language  
16 consistent with the following federal regulations: New  
17 Source Review Program for Particulate Matter Less Than 2.5  
18 Micrometers, Reasonable Possibility in Recordkeeping,  
19 Ethanol Production Facilities, and 8-Hour Ozone National  
20 Ambient Air Quality Standard provisions. Other revisions  
21 to the rule removes references to pollution control  
22 projects and clean units per 2005 US Court of Appeals for  
23 the District of Columbia Circuit Court decision which  
24 vacated pollution control project and clean unit

1 provisions. Miscellaneous revisions and/or corrections are  
2 also included to maintain consistency with current federal  
3 regulations. Upon authorization and promulgation of  
4 45CSR19, the Division will submit the rule to the U.S.  
5 Environmental Protection Agency as a revision to the State  
6 Implementation Plan pursuant to the federal Clean Air Act.

7 The floor is now open for comments.

8 (No response.)

9 MR. MASON: There being nothing further, this  
10 public hearing for proposed rule 45CSR19 is concluded.

11 (WHEREUPON, the hearing was concluded.)

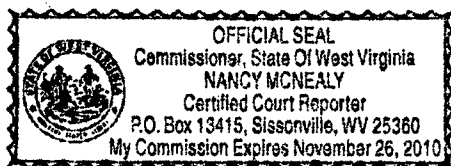
BEFORE THE WEST VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY

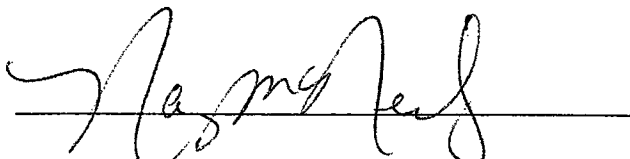
STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to wit:

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 17<sup>th</sup> day of July,  
2009.

My commission expires November 26, 2010.

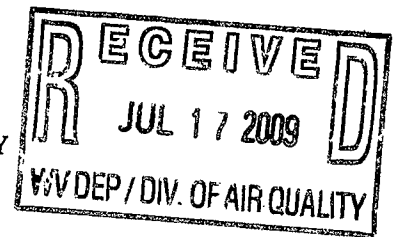


  
Certified Verbatim Reporter  
Commissioner of West Virginia





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029



JUL 13 2009

Mr. John Benedict, Director  
West Virginia Department of Environmental Protection  
Division of Air Quality  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

RE: Proposed Air Quality Rules for 2010 Legislative Session

Dear Mr. Benedict:

The United States Environmental Protection Agency (EPA) would like to thank you for the opportunity to comment on your proposed air quality rules for the 2010 legislative session, specifically 45 CSR 19.

Our recommendations on your Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment regulations (45 CSR 19) are provided in Enclosure A to this letter. Please consider our recommendations prior to formal submittal of your air quality rule (45 CSR 19) for approval into the West Virginia State Implementation Plan (SIP).

EPA stands ready to help West Virginia address any concerns they may have regarding our recommendations, so they can be approved into the West Virginia SIP. If you have any questions, please contact me or Amy Caprio of my staff at 215 814-2156.

Sincerely,

Diana Esher, Acting Director  
Air Protection Division

cc: Fred Durham, WVDEP (w/enclosures)  
Jim Mason, WVDEP (w/enclosures)  
Enclosures

## Enclosure

### EPA's Recommendations on West Virginia's Series 19 Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment (45 CSR 19)

1. Rule 45-19-2.39.b.5 reads as follows: "An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days." EPA acknowledges that the above language matches our language under the definition of a "net emissions increase". However, the addition of "replacement unit" as a legally defined term renders the availability of a shakedown period more restrictive than intended. West Virginia may want to revise this language to retain the historical intent of allowing a shakedown period for new units that are replacing existing units.
2. On May 16, 2008, EPA published new implementing regulations for new source review (NSR) for PM<sub>2.5</sub>. (73 FR 28321, May 16, 2008). Among other things, EPA established default interpollutant offset trading ratios for PM<sub>2.5</sub> and its precursors in the preamble to the final rule. These default trading ratios can be used by permitting authorities in the interim period before EPA approves a PM<sub>2.5</sub> NSR SIP by relying on Appendix S to 40 CFR part 51. States may also rely on 40 CFR 51.165(a)(11) to establish interpollutant trading ratios in their SIPs as follows:

"The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, 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 paragraph. The plan may allow the offset requirements in paragraph (a)(3) of this section for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> to be satisfied by offsetting reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under paragraph (a)(1)(xxxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area."

EPA is concerned that West Virginia consider the impact of not including interpollutant trading in the revisions to regulation 19. As you may know, the market for offsets of direct PM<sub>2.5</sub> is in its earliest stages and there are few PM<sub>2.5</sub> emission reductions available at this time. Initial indications are that facilities will need to rely on reductions in NO<sub>x</sub> and/or SO<sub>2</sub> to offset direct PM<sub>2.5</sub> increases until more PM<sub>2.5</sub> reductions are generated. If West Virginia adopts and submits Regulation 19 as a SIP revision without any provisions for interpollutant trading, the ability to do such trading will be precluded once EPA approves the SIP. In other words, once EPA approves your PM<sub>2.5</sub> NSR SIP, you may no longer rely on the authority in Appendix S for any purpose, including interpollutant trading.

EPA acknowledges that states may be reluctant to include the default ratios published as guidance in the preamble to the May 16, 2008 rule, especially in light of EPA granting a



petition for reconsideration of, among other things, these default ratios. However, it may be advisable to consider placeholder language that could be used to effect trading at a later date if the state decides not to proceed with the default ratios at this time.

3. The final PM<sub>2.5</sub> NSR rule at 40 CFR 51.165(a)(1)(xxxvii)(D) also was amended to address the transition period for quantifying the condensable fraction of PM<sub>2.5</sub> emissions:

“PM<sub>2.5</sub> emissions and PM<sub>10</sub> 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 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in nonattainment major NSR permits. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> 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.”

Silence in regulation 19 with respect to condensable emissions may lead to confusion among the regulated community as well as the public as to how and when PM<sub>2.5</sub> emissions are to be calculated and measured. We suggest that the revisions to regulation 19 include the transition period outlined in the federal rule for the sake of clarity.



# SIERRA CLUB

## WEST VIRGINIA CHAPTER

P. O. Box 4142  
Morgantown, WV 26504

July 12, 2009

West Virginia Division of Air Quality  
Department of Environmental Protection,  
601 57th Street S.E.,  
Charleston, WV 25304.

Re: Comments on Air Rules.

Please accept the following comments on behalf of the West Virginia Chapter of Sierra Club.

1. 45-CSR-8. No comments. We support adoption of the proposed language.
2. 45-CSR-14. We support addition of pollutant precursors to the list of regulated pollutants. We also support the deletion of the terms and conditions allowing a "Plantwide Applicability Limitation" (PAL). Such provisions create onerous burdens for the agency in terms of assuring adequate monitoring and enforcement. A number of our comments for 45-CSR-19 apply to this rule as well, although they do not necessarily pertain to the newly proposed changes to 45-CSR-14.
3. 45-CSR-16. No comments.
4. 45-CSR-19.

**Comment 4.A.** The use of the term "regulated NSR pollutant" (in 2.61, and throughout) is indistinguishable from "regulated pollutant", as no meaningful difference in the definition is proposed. Hence, to the extent that the addition of the term "NSR" has any applicability, it could potentially limit the scope of DEP's authority. Since the actual definition is unchanged, use of the term adds confusion and is unnecessarily redundant. It is used over 30 times in this rule, and I can not find any instance where it materially adds to the rule. **We recommend that it be removed for the sake of conciseness and clarity. Alternatively, delete the word "regulated" from the term, since any NSR pollutant is a regulated pollutant by virtue of coming under New Source Review.** But the inclusion of both terms is redundant and will cause unnecessary confusion.

*Not Blind Opposition To Progress, But Opposition To Blind Progress*

**Comment 4.B.** Section 2.26.b defines a replacement unit as an “existing emissions unit”, and Section 2.62 defines a replacement unit as one which replaces an existing piece of equipment. Section 2.33.c.1 exempts replacements from the definition of “Major Modification”. Unfortunately the criteria of 2.62 a-d, do not adequately verify that a replacement unit represents BACT, and instead includes those units that exceed 50 % of the capitol cost of the unit. Since 40 CFR 60.15 (b) (1) includes such replacements units in the definition of affected units for which NSR requirements apply, the exemption of replacements in 2.33.c.1 appears to circumvent NSR requirements. The intent of the BACT provisions is to encourage continuous improvement in pollution control technology and thereby to provide further reductions in pollution emissions. This is particularly true when upgrades to major sources are proposed. Replacing an existing 40-year-old boiler with the identical boiler would allow the facility to dodge 40 years of improved boiler technology. Furthermore, such a replacement is allowed to generate “offsets” in section 7.5.a., without adequately demonstrating that the replacement is the best available control technology, nor that the emissions reductions generated by the replacement are surplus to what would be required under an attainment plan for the nonattainment area. **We recommend that Section 2.26.b be revised to indicate that replacement units as defined in 40 CFR 60.15.(b) (1) (i.e., those whose cost exceeds 50 % of the capitol cost of a comparable new facility) be defined as “new emissions units” for which NSR requirements apply. The exemptions and provisions for “replacement units” should be limited to those whose cost is less than 50 % of the capitol cost of the facility, and for which it is not technically or economically feasible to meet BACT requirements.**

**Comment 4.C.** Section 2.35.e.17 requires “fuel conversion plants” to include fugitive emissions in determining whether the facility is a major source. This section appears to refer to facilities such as coal-to-liquids facilities, and we support this interpretation. **If the section does not apply to coal-to-liquids facilities, we recommend adding language to clarify that fugitive emissions from such facilities must be included for the purpose of determining whether any such source or source modification constitutes a major source. The same provisions should apply to section 3.7.a.18. (Note. There appears to be a numbering error in 3.7.a, as no subsection numbered 3.7.a.17 exists in this section.)**

**Comment 4.D.** **The exemption for facilities that produce ethanol by natural fermentation in section 2.35.e.20 should also be added to 3.7.a.21**

**Comment 4.E.** It is not clear why the language struck in subsection 7.4.a is being proposed for deletion. There does not appear to be any benefit to removing the requirement that emissions reductions are enforceable by the Secretary, nor for removing the requirement that the area has an approved attainment plan. If emissions reductions achieved through shut downs or curtailment of operation are insufficient to meet the attainment goals, the facility would be able to generate offsets from emissions reductions that would otherwise be required under an attainment plan. Such emissions reductions clearly are not “surplus” and should not be allowed for offsets. While section 8.6 addresses this issue partially, it does not go far enough to assure that all required emissions reductions are met before offset credits are allowed. **We recommend retaining the existing language, and adding the word “surplus” after “federally enforceable”.**

**Comment 4.F.** **Section 17.4, insert the word “the” in the second line in front of the words “following specific provisions”.**

**Comment 4.G.** We support the elimination of the "Clean Unit Exemption" and the provisions for so-called "Pollution Control Projects" (sections 20-22). **We also recommend that the provisions for "Plant-wide Applicability Limits" also be eliminated, as these needlessly complicate the monitoring and enforcement for permits in complex facilities.** The minor changes proposed for PALs in this rule, while potentially helpful, simply do not overcome the serious deficiencies that slip through in this overall concept.

45-CSR-25. No comments.

45-CSR-33. No comments.

45-CSR-34. No Comments.

Thank you for the opportunity to comment. Please feel free to contact me if I can provide further information to clarify these comments.

Sincerely,



James Kotcon, Chair  
State Government Programs Committee



## West Virginia Environmental Council

2206 Washington Street East ~ Charleston, WV 25311  
(304) 414-0143 www.wvecouncil.org

July 13, 2009

Public Information Office  
West Virginia Department of Environmental Protection  
601 57th Street S.E., Charleston, WV 25304

Re: Various Proposed Air Rules

To Whom It May Concern:

Thank you for the opportunity to submit these comments on behalf of the West Virginia Environmental Council concerning proposed rule changes to 45-CSR-14 and 45-CSR-19.

1. **45-CSR-14** -- We support addition of pollutant precursors to the list of regulated pollutants. We also support the deletion of the terms and conditions allowing a "Plantwide Applicability Limitation" (PAL). Such provisions create onerous burdens for the agency in terms of assuring adequate monitoring and enforcement. A number of our comments for 45-CSR-19 apply to this rule as well, although they do not necessarily pertain to the newly proposed changes to 45-CSR-14.
2. **45-CSR-19** -- See comments below.

**Comment A:** The use of the term "regulated NSR pollutant" (in 2.61, and throughout) is indistinguishable from "regulated pollutant," as no meaningful difference in the definition is proposed. Hence, to the extent that the addition of the term "NSR" has any applicability, it could potentially limit the scope of DEP's authority. Since the actual definition is unchanged, use of the term adds confusion and is unnecessarily redundant. It is used over 30 times in this rule, and I can not find any instance where it materially adds to the rule. We recommend that it be removed for the sake of conciseness and clarity. Alternatively, delete the word "regulated" from the term, since any NSR pollutant is a regulated pollutant by virtue of coming under New Source Review. But the inclusion of both terms is redundant and will cause unnecessary confusion.

**Comment B:** Section 2.26.b defines a replacement unit as an "existing emissions unit", and Section 2.62 defines a replacement unit as one which replaces an existing piece of equipment. Section 2.33.c.1 exempts replacements from the definition of "Major Modification". Unfortunately the criteria of 2.62 a-d, do not adequately verify that a replacement unit represents BACT, and instead includes those units that exceed 50 % of the capital cost of the unit. Since 40 CFR 60.15 (b) (1) includes such replacement units in the definition of affected units for which NSR requirements apply, the exemption of replacements in 2.33.c.1 appears to circumvent NSR requirements. The intent of the BACT provisions is to encourage continuous improvement in pollution control technology and thereby to provide further reductions in pollution emissions. This is particularly true when upgrades to major sources are proposed. Replacing an existing 40-year-old boiler with the identical boiler would allow the facility to dodge 40 years of improved boiler technology. Furthermore, such a replacement is allowed to generate "offsets" in section 7.5.a., without adequately demonstrating that the replacement is the best available control technology, nor that the emissions reductions generated by the replacement are surplus to what would be required under an attainment plan for the nonattainment area. We recommend that Section 2.26.b be revised to indicate that replacement units as defined in 40 CFR 60.15.(b) (1) (i.e., those whose cost exceeds 50 % of the capital cost of

a comparable new facility) be defined as "new emissions units" for which NSR requirements apply. The exemptions and provisions for "replacement units" should be limited to those whose cost is less than 50 % of the capitol cost of the facility, and for which it is not technically or economically feasible to meet BACT requirements.

**Comment C:** Section 2.35.e.17 requires "fuel conversion plants" to include fugitive emissions in determining whether the facility is a major source. This section appears to refer to facilities such as coal-to-liquids facilities, and we support this interpretation. If the section does not apply to coal-to-liquids facilities, we recommend adding language to clarify that fugitive emissions from such facilities must be included for the purpose of determining whether any such source or source modification constitutes a major source. The same provisions should apply to section 3.7.a.18. (Note. There appears to be a numbering error in 3.7.a, as no subsection numbered 3.7.a.17 exists in this section.)

**Comment D:** The exemption for facilities that produce ethanol by natural fermentation in section 2.35.e.20 should also be added to 3.7.a.21

**Comment E:** It is not clear why the language struck in subsection 7.4.a is being proposed for deletion. There does not appear to be any benefit to removing the requirement that emissions reductions are enforceable by the Secretary, nor for removing the requirement that the area has an approved attainment plan. If emissions reductions achieved through shut downs or curtailment of operation are insufficient to meet the attainment goals, the facility would be able to generate offsets from emissions reductions that would otherwise be required under an attainment plan. Such emissions reductions clearly are not "surplus" and should not be allowed for offsets. While section 8.6 addresses this issue partially, it does not go far enough to assure that all required emissions reductions are met before offset credits are allowed. We recommend retaining the existing language, and adding the word "surplus" after "federally enforceable".

**Comment F:** Section 17.4, insert the word "the" in the second line in front of the words "following specific provisions".

**Comment G:** We support the elimination of the "Clean Unit Exemption" and the provisions for so-called "Pollution Control Projects" (sections 20-22). We also recommend that the provisions for "Plant-wide Applicability Limits" also be eliminated, as these needlessly complicate the monitoring and enforcement for permits in complex facilities. The minor changes proposed for PALs in this rule, while potentially helpful, simply do not overcome the serious deficiencies that slip through in this overall concept.

We hope you will give serious consideration to these comments, and thank you again for the opportunity.

Sincerely,



Donald S. Garvin, Jr.  
WVEC Legislative Coordinator

**Representing West Virginia "Special Interests":  
People Who Want to Breathe Clean Air and Drink Clean Water**

**Mason, James L**

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**From:** Chandler, Jeanne  
**Sent:** Monday, July 13, 2009 2:18 PM  
**To:** jkotcon@wvu.edu  
**Cc:** Durham, William F; Mason, James L  
**Subject:** FW: Additional comment on 45-CSR-19 and 45-CSR-14  
**Attachments:** Header

Jim -

I have forwarded your comments to those conducting the hearing.  
Thank you for your participation in the process.

Jeanne  
304-926-0499 Ext. 1250

-----Original Message-----

**From:** James Kotcon [mailto:jkotcon@wvu.edu]  
**Sent:** Monday, July 13, 2009 2:12 PM  
**To:** Chandler, Jeanne  
**Subject:** Fwd: Additional comment on 45-CSR-19 and 45-CSR-14

Jeanne:

Please forward to Fred Durham or whomever handles comments on rules. The e-mail link [comments@wvdep.org](mailto:comments@wvdep.org) came back with the message "Host or domain name not found. Name service error for name=wvdep.org type=A: Host found but no data record of requested type"

Jim Kotcon

>>> "James Kotcon" <jkotcon@wvu.edu> 7/13/2009 1:47 PM >>>

I appreciate the opportunity to clarify my concerns on one issue with 45-CSR-19. My main concern is that the definition of "replacement unit" (2.62) cites 40 CFR-60.15 (b) (1) which identifies a replacement unit as projects costing greater than 50 % of the capital cost of a comparable new facility. Hence, that section of the federal rules identifies the replacement units that qualify as "affected units" for which New Source Review applies. Section 20.62 correctly provides that replacement units are not eligible to qualify as "emission reductions" for purposes of generating offsets. But in 45-CSR-19, the definition of "major modification" (section 2.33) specifically exempts "replacements" as a major modification, and section 2.26.b says that a replacement unit is an "existing emissions unit". The net effect of these later two provisions appears to me to create the impression that "replacement units" are not major modifications and are therefore exempt from NSR requirements. I think that is contrary to the intent of the federal rules that specifically define replacement units (those costing more than 50 % of the cost of the facility) as an "affected unit".

This is also an important issue for 45-CSR-14 because it has comparable language and appears to have had it for some years. Hence, both of these rules would need to be clarified, even though the language is only being proposed as new in 45-CSR-19.

I recommend that the definition of "Replacement Unit" be expanded to include both 40 CFR-60.15 (b) (1) and (b)(2) to assure consistency with the entire federal definition, that the definition of "major modification" be modified to exempt routine maintenance and repairs, but not "replacements", and that replacements be defined as "new emissions units" rather than as existing emissions units. These changes may also require some fine-tuning of the process for establishing "offsets" in 45-CSR-19, but I think it would be more clear and would better conform with the language and intent of federal New Source Review rules.

James Kotcon

## Air Rules Note From Kotcon

I got a long rambling call back from Fred Durham. He basically said that EPA is also looking at their use of the term "replacement Unit", but that, since they are in a public comment period, they are limited as to what communications can take place to avoid the appearance of ex parte communications, so they simply encouraged me to submit any comments in writing.

My main concern is that the definition of "replacement unit" (2.62) cites 40 CFR-60.15 (b) (1) which identifies a replacement unit as projects costing greater than 50 % of the capital cost of a comparable new facility. Hence, that section of the federal rules identifies the replacement units that qualify as "affected units" for which New Source Review applies. Section 20.62 correctly provides that replacement units are not eligible to qualify as "emission reductions" for purposes of generating offsets. But in the WV rule, the definition of "major modification" (section 2.33) specifically exempts "replacements" as a major modification, and section 2.26.b says that a replacement unit is an "existing emissions unit". The net effect of these later two provisions appears to me to create the impression that "replacement units" are not major modifications and are therefore exempt from NSR requirements. I think that is contrary to the intent of the federal rules that specifically define replacement units (those costing more than 50 % of the cost of the facility) as an "affected unit". This is also an important issue for 45-CSR 14 because reg 14 has comparable language and appears to have had it for some years. Hence, both of these rules would need to be clarified, even though the language is only being proposed as new in Reg 19.

Call me if this is unclear.

JBK

## 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 12, 2009, the Division of Air Quality (DAQ) commenced a thirty day public comment period and subsequently held a public hearing on July 13, 2009 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 13, 2009.

One person verbally commented at the public hearing concerning proposed rule 45CSR14. Three commenters submitted written comments on proposed rule 45CSR14. One person verbally commented at the public hearing concerning proposed rule 45CSR19. Four commenters submitted written comments on proposed rule 45CSR19. DAQ addresses these comments below.

#### I. COMMENTER: Environmental Protection Agency

**COMMENT A.** The commenter states, "*Rule 45-19-2.39.b.5 reads as follows: "An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days." EPA acknowledges that the above language matches our language under the definition of a "net emissions increase". However, the addition of "replacement unit" as a legally defined term renders the availability of a shakedown period more restrictive than intended. West Virginia may want to revise this language to retain the historical intent of allowing a shakedown period for new units that are replacing existing units.*"

**RESPONSE A.** DAQ has revised the rule consistent with EPA's comment.

**COMMENT B.** The commenter states, "On May 16, 2008, EPA published new implementing regulations for new source review (NSR) for PM<sub>2.5</sub>. (73 FR 28321, May 16, 2008). Among other things, EPA established default interpollutant offset trading ratios for PM<sub>2.5</sub> and its precursors in the preamble to the final rule. These default trading ratios can be used by permitting authorities in the interim period before EPA approves a PM<sub>2.5</sub> NSR SIP by relying on Appendix S to 40 CFR part 51. States may also rely on 40 CFR 51.165(a)(11) to establish interpollutant trading ratios in their SIPs as follows:

“The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, 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 paragraph. The plan may allow the offset requirements in paragraph (a)(3) of this section for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> to be satisfied by offsetting reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under paragraph (a)(1)(xxxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.”

EPA is concerned that West Virginia consider the impact of not including interpollutant trading in the revisions to regulation 19. As you may know, the market for offsets of direct PM<sub>2.5</sub> is in its earliest stages and there are few PM<sub>2.5</sub> emission reductions available at this time. Initial indications are that facilities will need to rely on reductions in NO<sub>x</sub> and/or SO<sub>2</sub> to offset direct PM<sub>2.5</sub> increases until more PM<sub>2.5</sub> reductions are generated. If West Virginia adopts and submits Regulation 19 as a SIP revision without any provisions for interpollutant trading, the ability to do such trading will be precluded once EPA approves the SIP. In other words, once EPA approves your PM<sub>2.5</sub> NSR SIP, you may no longer rely on the authority in Appendix S for any purpose, including interpollutant trading.

EPA acknowledges that states may be reluctant to include the default ratios published as guidance in the preamble to the May 16, 2008 rule, especially in light of EPA granting a petition for reconsideration of, among other things, these default ratios. However, it may be advisable to consider placeholder language that could be used to effect trading at a later date if the state decides not to proceed with the default ratios at this time.”

**RESPONSE B.** DAQ has revised the rule to contain the default ratios consistent with EPA’s comment.

**COMMENT C.** The commenter states, “The final PM<sub>2.5</sub> NSR rule at 40 CFR 51.165(a)(1)(xxxvii)(D) also was amended to address the transition period for quantifying the condensable fraction of PM<sub>2.5</sub> emissions:

“PM<sub>2.5</sub> emissions and PM<sub>10</sub> 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 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in nonattainment major NSR permits. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> 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.”

Silence in regulation 19 with respect to condensable emissions may lead to confusion among the regulated community as well as the public as to how and when PM<sub>2.5</sub> emissions are to be calculated

and measured. We suggest that the revisions to regulation 19 include the transition period outlined in the federal rule for the sake of clarity.”

RESPONSE C.        DAQ has revised the rule consistent with EPA’s comment.

## II.     COMMENTER:     Sierra Club

**COMMENT A.**        The commenter states, “45-CSR-14 -- *We support addition of pollutant precursors to the list of regulated pollutants. We also support the deletion of the terms and conditions allowing a “Plantwide Applicability Limitation” (PAL). Such provisions create onerous burdens for the agency in terms of assuring adequate monitoring and enforcement. A number of our comments for 45-CSR-19 apply to this rule as well, although they do not necessarily pertain to the newly proposed changes to 45-CSR-14.*”

RESPONSE A.        DAQ has revised the rule to be consistent with current federal counterpart language and guidance. DAQ notes that Plant-wide Applicability Limit provisions are consistent with current federal counterpart language, and therefore should not be deleted.

**COMMENT B.**        The commenter states, “45-CSR-19 - *See comments below. The use of the term “regulated NSR pollutant” (in 2.61, and throughout) is indistinguishable from “regulated pollutant,” as no meaningful difference in the definition is proposed. Hence, to the extent that the addition of the term “NSR” has any applicability, it could potentially limit the scope of DEP’s authority. Since the actual definition is unchanged, use of the term adds confusion and is unnecessarily redundant. It is used over 30 times in this rule, and I can not find any instance where it materially adds to the rule. We recommend that it be removed for the sake of conciseness and clarity. Alternatively, delete the word “regulated” from the term, since any NSR pollutant is a regulated pollutant by virtue of coming under New Source Review. But the inclusion of both terms is redundant and will cause unnecessary confusion.*”

RESPONSE B.        DAQ has revised the term “regulated NSR Pollutant” throughout the rule to ensure consistency with current federal counterpart language.

**COMMENT C.**        The commenter states, *Section 2.26.b defines a replacement unit as an “existing emissions unit”, and Section 2.62 defines a replacement unit as one which replaces an existing piece of equipment. Section 2.33.c.1 exempts replacements from the definition of “Major Modification”. Unfortunately the criteria of 2.62 a-d, do not adequately verify that a replacement unit represents BACT, and instead includes those units that exceed 50 % of the capitol cost of the unit. Since 40 CFR 60.15 (b) (1) includes such replacements units in the definition of affected units for which NSR requirements apply, the exemption of replacements in 2.33.c.1 appears to circumvent NSR requirements. The intent of the BACT provisions is to encourage continuous improvement in pollution control technology and thereby to provide further reductions in pollution emissions. This is particularly true when upgrades to major sources are proposed. Replacing an existing 40-year-old boiler with the identical boiler would allow the facility to dodge 40 years of improved*

boiler technology. Furthermore, such a replacement is allowed to generate "offsets" in section 7.5.a., without adequately demonstrating that the replacement is the best available control technology, nor that the emissions reductions generated by the replacement are surplus to what would be required under an attainment plan for the nonattainment area. We recommend that Section 2.26.b be revised to indicate that replacement units as defined in 40 CFR 60.15.1b) (1) (i.e., those whose cost exceeds 50 % of the capitol cost of a comparable new facility) be defined as "new emissions units" for which NSR requirements apply. The exemptions and provisions for "replacement units" should be limited to those whose cost is less than 50 % of the capitol cost of the facility, and for which it is not technically or economically feasible to meet BACT requirements."

RESPONSE C. DAQ believes the commenter is confusing the definition of replacement unit with the "replacement" exemption under the definition of "major modification." These are differing and separate concepts under New Source Review. A replacement exemption is not reviewed according to the "replacement unit" definition. DAQ has revised subdivision 2.26.b to be consistent with current federal counterpart language.

COMMENT D. The commenter states, "Section 2.35.e.17 requires "fuel conversion plants" to include fugitive emissions in determining whether the facility is a major source. This section appears to refer to facilities such as coal-to-liquids facilities, and we support this interpretation. If the section does not apply to coal-to-liquids facilities, we recommend adding language to clarify that fugitive emissions from such facilities must be included for the purpose of determining whether any such source or source modification constitutes a major source. The same provisions should apply to section 3.7.a.18. (Note. There appears to be a numbering error in 3.7.a, as no subsection numbered 3.7.a.17 exists in this section.)"

RESPONSE D. DAQ generally considers coal-to-liquids facilities to be "fuel conversion plants". DAQ has also corrected the numbering error in the rule.

COMMENT E. The commenter states, "The exemption for facilities that produce ethanol by natural fermentation in section 2.35.e.20 should also be added to 3.7.a.21."

RESPONSE E. DAQ has revised the rule to be consistent with Sierra's comment.

COMMENT F. The commenter states, "It is not clear why the language struck in subsection 7.4.a is being proposed for deletion. There does not appear to be any benefit to removing the requirement that emissions reductions are enforceable by the Secretary, nor for removing the requirement that the area has an approved attainment plan. If emissions reductions achieved through shut downs or curtailment of operation are insufficient to meet the attainment goals, the facility would be able to generate offsets from emissions reductions that would otherwise be required under an attainment plan. Such emissions reductions clearly are not "surplus" and should not be allowed for offsets. While section 8.6 addresses this issue partially, it does not go far enough to assure that all required emissions reductions are met before offset credits are allowed. We recommend retaining the existing language, and adding the word "surplus" after "federally

enforceable”.”

RESPONSE F. DAQ has revised subdivision 7.4.a to be consistent with the current federal counterpart language. The word “surplus” is not contained in the federal counterpart language.

COMMENT G. The commenter states, “Section 17.4, insert the word “the” in the second line in front of the words “following specific provisions”.

RESPONSE G. DAQ has revised the rule to be consistent with Sierra’s comment.

COMMENT H. The commenter states, *“We support the elimination of the “Clean Unit Exemption” and the provisions for so-called “Pollution Control Projects” (sections 20-22). We also recommend that the provisions for “Plant-wide Applicability Limits” also be eliminated, as these needlessly complicate the monitoring and enforcement for permits in complex facilities. The minor changes proposed for PALS in this rule, while potentially helpful, simply do not overcome the serious deficiencies that slip through in this overall concept.”*

RESPONSE H. DAQ has revised sections 20 - 22 to be consistent with the current federal counterpart language. DAQ notes that Plant-wide Applicability Limit provisions are consistent with current federal counterpart language, and therefore should not be deleted.

### III. COMMENTER: West Virginia Environmental Council

COMMENT A. The commenter states, *“45-CSR-14 -- We support addition of pollutant precursors to the list of regulated pollutants. We also support the deletion of the terms and conditions allowing a “Plantwide Applicability Limitation” (PAL). Such provisions create onerous burdens for the agency in terms of assuring adequate monitoring and enforcement. A number of our comments for 45-CSR-19 apply to this rule as well, although they do not necessarily pertain to the newly proposed changes to 45-CSR-14.”*

RESPONSE A. DAQ refers the commenter to Response IIA.

COMMENT B. The commenter states, *“45-CSR-19 - See comments below. The use of the term “regulated NSR pollutant” (in 2.61, and throughout) is indistinguishable from “regulated pollutant,” as no meaningful difference in the definition is proposed. Hence, to the extent that the addition of the term “NSR” has any applicability, it could potentially limit the scope of DEP’s authority. Since the actual definition isn’t unchanged, use of the term adds confusion and is unnecessarily redundant. It is used over 30 times in this rule, and I can not find any instance where it materially adds to the rule. We recommend that it be removed for the sake of conciseness and clarity. Alternatively, delete the word “regulated” from the term, since any NSR pollutant is a regulated pollutant by*

*virtue of coming under New Source Review. But the inclusion of both terms is redundant and will cause unnecessary confusion.*”

RESPONSE B.        DAQ refers the commenter to Response IIB.

**COMMENT C.**        The commenter states, *Section 2.26.b defines a replacement unit as an “existing emissions unit”, and Section 2.62 defines a replacement unit as one which replaces an existing piece of equipment. Section 2.33.c.1 exempts replacements from the definition of “Major Modification”. Unfortunately the criteria of 2.62 a-d, do not adequately verify that a replacement unit represents BACT, and instead includes those units that exceed 50 % of the capitol cost of the unit. Since 40 CFR 60.15 (b) (1) includes such replacements units in the definition of affected units for which NSR requirements apply, the exemption of replacements in 2.33.c.1 appears to circumvent NSR requirements. The intent of the BACT provisions is to encourage continuous improvement in pollution control technology and thereby to provide further reductions in pollution emissions. This is particularly true when upgrades to major sources are proposed. Replacing an existing 40-year-old boiler with the identical boiler would allow the facility to dodge 40 years of improved boiler technology. Furthermore, such a replacement is allowed to generate “offsets” in section 7.5.a., without adequately demonstrating that the replacement is the best available control technology, nor that the emissions reductions generated by the replacement are surplus to what would be required under an attainment plan for the nonattainment area. We recommend that Section 2.26.b be revised to indicate that replacement units as defined in 40 CFR 60.15.1b) (1) (i.e., those whose cost exceeds 50 % of the capitol cost of a comparable new facility) be defined as “new emissions units” for which NSR requirements apply. The exemptions and provisions for “replacement units” should be limited to those whose cost is less than 50 % of the capitol cost of the facility, and for which it is not technically or economically feasible to meet BACT requirements.”*

RESPONSE C.        DAQ refers the commenter to Response IIC.

**COMMENT D.**        The commenter states, *“Section 2.35.e.17 requires “fuel conversion plants” to include fugitive emissions in determining whether the facility is a major source. This section appears to refer to facilities such as coal-to-liquids facilities, and we support this interpretation. If the section does not apply to coal-to-liquids facilities, we recommend adding language to clarify that fugitive emissions from such facilities must be included for the purpose of determining whether any such source or source modification constitutes a major source. The same provisions should apply to section 3.7.a.18. (Note. There appears to be a numbering error in 3.7.a, as no subsection numbered 3.7.a.17 exists in this section.)”*

RESPONSE D.        DAQ refers the commenter to Response IID.

**COMMENT E.**        The commenter states, *“The exemption for facilities that produce ethanol by natural fermentation in section 2.35.e.20 should also be added to 3.7.a.21.”*

RESPONSE E.        DAQ refers the commenter to Response IIE.

**COMMENT F.** The commenter states, *"It is not clear why the language struck in subsection 7.4.a is being proposed for deletion. There does not appear to be any benefit to removing the requirement that emissions reductions are enforceable by the Secretary, nor for removing the requirement that the area has an approved attainment plan. If emissions reductions achieved through shut downs or curtailment of operation are insufficient to meet the attainment goals, the facility would be able to generate offsets from emissions reductions that would otherwise be required under an attainment plan. Such emissions reductions clearly are not "surplus" and should not be allowed for offsets. While section 8.6 addresses this issue partially, it does not go far enough to assure that all required emissions reductions are met before offset credits are allowed. We recommend retaining the existing language, and adding the word "surplus" after "federally enforceable"."*

**RESPONSE F.** DAQ refers the commenter to Response IIF.

**COMMENT G.** The commenter states, *"Section 17.4, insert the word "the" in the second line in front of the words "following specific provisions".*

**RESPONSE G.** DAQ refers the commenter to Response IIG.

**COMMENT H.** The commenter states, *"We support the elimination of the "Clean Unit Exemption" and the provisions for so-called "Pollution Control Projects" (sections 20-22). We also recommend that the provisions for "Plant-wide Applicability Limits" also be eliminated, as these needlessly complicate the monitoring and enforcement for permits in complex facilities. The minor changes proposed for PALS in this rule, while potentially helpful, simply do not overcome the serious deficiencies that slip through in this overall concept."*

**RESPONSE H.** DAQ refers the commenter to Response IIH.

#### **IV. COMMENTER: Jim Kotcon**

**COMMENT A.** The commenter states, *"I appreciate the opportunity to clarify my concerns on one issue with 45-CSR-19. My main concern is that the definition of "replacement unit" (2.62) cites 40 CFR-60.15 (b) (1) which identifies a replacement unit as projects costing greater than 50% of the capital cost of a comparable new facility. Hence, that section of the federal rules identifies the replacement units that qualify as "affected units" for which New Source Review applies. Section 20.62 correctly provides that replacement units are not eligible to qualify as "emission reductions" for purposes of generating offsets. But in 45-CSR-19, the definition of "major modification" (section 2.33) specifically exempts "replacements" as a major modification, and section 2.26.b says that a replacement unit is an "existing emissions unit". The net effect of these later two provisions appears to me to create the impression that "replacement units" are not major modifications and are therefore exempt from NSR requirements. I think that is contrary to the intent of the federal rules*

*that specifically define replacement units (those costing more than 50% of the cost of the facility) as an "affected unit".*

RESPONSE A.        DAQ refers the commenter to Response IIC.

**COMMENT B.**        The commenter states, *"This is also an important issue for 45-CSR-14 because it has comparable language and appears to have had it for some years. Hence, both of these rules would need to be clarified, even though the language is only being proposed as new in 45-CSR-19. I recommend that the definition of "Replacement Unit" be expanded to include both 40 CFR-60.15 (b)(1) and (b)(2) to assure consistency with the entire federal definition, that the definition of "major modification" be modified to exempt routine maintenance and repairs, but not "replacements", and that replacements be defined as "new emissions units" rather than as existing emissions units. These changes may also require some fine-tuning of the process for establishing "offsets" in 45-CSR-19, but I think it would be more clear and would better conform with the language and intent of federal New Source Review rules."*

RESPONSE B.        DAQ refers the commenter to Response IIC.

**V.        COMMENTER:        Don Garvin**

**COMMENT A.**        The commenter states, *"Concerning 45C R14 we support addition of pollutant precursors to the list of regulating pollutants, and we also support the deletion of the terms and conditions allowing the plant-wide applicability limitation."*

RESPONSE A.        DAQ refers the commenter to Response IIIH.

**COMMENT B.**        The commenter states, *"This doesn't have to be on the record, but our comments are basically identical to comments sent to you by Jim Kotcon for the Sierra Club. .... There seems to be in Jim's mind a conflict over what -- over definitions in our state rule, they use a "replacement unit" and in the federal rules the definition of "affected unit" and Jim says that the net effect of the provisions here appear to create the impression that replacement units are not major modifications and are therefore exempt from new source review requirements, and we think that's contrary to the intent of the federal rules."*

RESPONSE B.        DAQ refers the commenter to Response IIC.