

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #1

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JUN 21 4 24 PM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Environmental Protection TITLE NUMBER: 45  
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code §§22-5-1 et seq.  
AMENDMENT TO AN EXISTING RULE: YES  NO   
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 19

TITLE OF RULE BEING AMENDED: 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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: July 29, 1994 TIME: 9:00 am

LOCATION OF PUBLIC HEARING: WVDEP - Office of Air Quality  
1558 Washington Street East  
Charleston WV 25311

COMMENTS LIMITED TO: ORAL \_\_\_\_\_, WRITTEN \_\_\_\_\_, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Office of Air Quality

1558 Washington Street E

Charleston WV 25311

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
Authorized Signature

8.60

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

STATEMENT OF CIRCUMSTANCES

This rule is designed to ensure that major sources to be constructed or modified in areas not attaining the National Ambient Air Quality Standard will incorporate equipment to control emissions to the greatest extent practicable; will obtain adequate offsetting emissions reductions from existing sources; and that there will be progress toward achievement of the National Ambient Air Quality Standards. The proposed amendments to this rule clarify preconstruction review requirements of Title I of the 1990 Clean Air Act Amendments to projects undertaken at electric utility steam generating units in areas not attaining an ambient air quality standard, make certain changes resulting from changes to authorizing statute and otherwise conform to changes in Clean Air Act provisions. Promulgation of amendments to this rule by the Legislature is necessary for the State to meet its responsibilities under the Clean Air Act, as amended.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 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

Type of Rule:  X  Legislative   Interpretive   Procedural

Agency:  Office of Air Quality

Address:  1558 Washington Street, East   
 Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: Costs incurred to implement this new source permitting rule are covered under the budget estimate for implementing the Clean Air Act, as amended, under 45CSR30 authorized during the 1994 Legislative Session and now in effect.
  
3. Objectives of these rules: This rule is designed to ensure that emissions from major new sources and modifications will be controlled to the greatest degree practicable; that adequate offsetting emission reductions will be obtained from existing sources to accommodate the construction of major new sources in areas not attaining any ambient air quality standard; and that there will be progress toward achievement of the National Ambient Air Quality Standards.

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

Based upon past permitting activity up to 3 man-years of effort may be required to process permit applications for major sources and major modifications under 45CSR19 and 45CSR14 in any particular year. At the 3 man-year level, program costs would be approximately \$150,000. The proposed rule revisions should not change this economic impact. The funding for this program must come from fees collected pursuant to 45CSR30 authorized by the Legislature during the 1994 session.

B. Economic impact on political subdivisions; specific industries; specific groups of citizens.

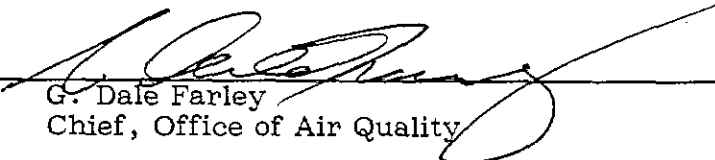
The provisions of this regulation which are generally applicable nationally could impact upon the siting of proposed new major facilities and the permit application and emission control costs for such facilities. Permit application fees can range up to \$14,500. The proposed rule amendments should not significantly change current potential economic impacts.

C. Economic impact on citizens/public at large.

Proposed rule revisions will have minimal impact.

Date: June 21, 1994

Signature of agency head or authorized representative:

  
G. Dale Farley  
Chief, Office of Air Quality

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JUN 21 4 15 PM '91

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

SUMMARY

45CSR19 was initially promulgated by the Air Pollution Control Commission on April 27, 1983 and became effective on May 27, 1983. The purpose of the rule is to register and evaluate proposed new major stationary sources or major modifications which locate in an area with air quality designated as not attaining the National Ambient Air Quality Standards, in order to ensure that such activity and the emission offsets required for permitting such activity result in an overall net air quality benefit.

This rule was amended on July 7, 1993, primarily as a result of changes in the Clean Air Act and counterpart federal New Source Review regulations. Additional language was included to better define permit application requirements and public review procedures, and the time frame for permit review was changed to six months.

45CSR19 is currently being revised to reflect USEPA's changes to 40 CFR Section 51.165. Changes include clarifying nonattainment area preconstruction review requirements of Title I of the 1990 Clean Air Act Amendments to projects undertaken at electric utility steam generating units in areas not attaining an ambient air quality standard; changes resulting from changes to the authorizing statute; and changes in Clean Air Act provisions. Definitions in section 2 have been alphabetized. Changes are indicated by underline and ~~strikeout~~.

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TITLE 45  
LEGISLATIVE RULE  
BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

JUN 21 4 14 PM '94  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 19  
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

§45-19-1. General.

1.1. Scope. -- It is the intent of the ~~commission~~Director 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 ~~regulation~~rule.

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~~rules adopted by the ~~commission~~Director will be met.

Further, it is the intent of the ~~commission~~Director to extend to the owners or operators of existing sources an alternative emission reduction concept, called "Emission Trading", which permits a greater burden of control where the cost of control technology is low, and a lesser burden where the cost is high.

The use of emission trading is intended to be and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or unduly delay compliance with the requirements of W. Va. Code §§22-5-1 et seq. Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, (the Code) or the federal Clean Air Act, as amended, nor the applicable regulations, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future non-compliance.

1.2. Authority. -- W. Va. Code ~~§16-20-5~~§22-5-1 et. seq.

1.3. Filing Date. -- ~~July 7, 1993~~

1.4. Effective Date. -- ~~July 7, 1993~~

1.5. Type. -- ~~This regulation is a legislative rule as defined in W. Va. Code Chapter 29A, Article 2.~~Incorporation by Reference -- Federal Counterpart Regulation. - Not Applicable.

45CSR19

1.6. Determination of Stringency -- Federal Counterpart Regulation. This rule as promulgated prior to June 10, 1994, closely conformed to the federal counterpart non-attainment area new source review rule 40 CFR 51.165.

Federal Register / Vol. 57, No. 140 / Tuesday, July 21, 1992 incorporates USEPA's revised rule which clarifies non-attainment preconstruction review requirements of Title I of the 1990 Clean Air Act Amendments to projects undertaken at electric utility steam generating units. All changes made to 45CSR19 in relation to these requirements correspond to USEPA's final rule, except for the inclusion of §45-19-2.43 (definition of "repowering"), which was added for clarity. The rule also contains amendments to conform to changes in the authorizing statute and other changes in Clean Air Act provisions.

The rule as amended does not substantively deviate from federal counterpart rules and is therefore, no more or no less stringent than the federal counterpart rule.

1.7. Constitutional Takings Determination -- The Director has determined that this rule will not result in a constitutional taking of real property.

**§45-19-2. Definitions.**

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

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2)-year period which precedes the particular date and which is representative of normal source operation. The chiefDirector may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

c. For any emissions unit (other than an electric utility steam generating unit specified in paragraph 2.1.d.) which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

d. For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit following the physical or operational change, provided the source owner

or operator maintains and submits to the Director, on an annual basis for a period of five (5) years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed ten (10) years, may be required by the Director if the Director determines such a period to be more representative of normal source post-change operations.

2.2.2-5: "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

2.3.2-6: "Air pollution", or "Statutory air pollution", means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property ~~has the meaning ascribed to it in Section Two of the West Virginia Code 16-20, as amended.~~

2.4.2-2: "Allowable emissions" means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits, ~~limits established by the commission~~ or limits enforceable by the ~~chief Director pursuant to the commission's rules~~ which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards as set forth in 40 CFR Parts 60, ~~and 61~~ and 63;
- b. The applicable State of West Virginia emissions limitations or permit conditions, including those with a future compliance date; or
- c. The applicable federally enforceable emissions limitations or permit conditions, including those with a future compliance date.

2.5.2-3: "Applicable regulations" means, for the purpose of this regulation rule, the ~~West Virginia Administrative Regulations~~ legislative rules of the Air Pollution Control Commission Director ~~as promulgated pursuant to the Code of West Virginia, of 1931, as amended,~~ and regulations of the Environmental Protection Agency USEPA promulgated pursuant to the Clean Air Act, as amended.

2.6.2-4: "Applicant" means any person who makes application to the ~~chief~~ Director for a permit to construct, modify or relocate a source in West Virginia under the provisions of this ~~regulation~~ rule.

2.7. "Baseline" means the limitation of emissions of a source, as determined by the applicable regulations in effect at the time an application to construct or modify a source is filed and as more fully defined in section 7. ~~of this regulation.~~

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

~~2.9.2-38:~~ "Building, Structure, Facility, or Installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are a 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 (United States Government Printing Office stock number GPO 0-185-718:QL 3).

~~210.2-9:~~ "Chief of the Office of Air Quality" or "Chief" means the ~~chief~~ principal administrative officer of the Office of Air Quality or ~~his or her~~ other designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §§22-1-1 et seq.

2.11. "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.

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

2.13. [RESERVED] ~~2-10:~~ "Code" means principally Chapter 16, Article 20, ~~of the Code of West Virginia of 1931, as amended, and, where applicable, Chapter 20, Article 5E of the Code of West Virginia of 1931, as amended.~~

~~2.14.2-11- [RESERVED] "Commission" means the West Virginia Air Pollution Control Commission.~~

~~2.15.2-12- "Commence" means as applied to construction of a major stationary source or major modification that the owner or operator has all necessary pre-construction approvals or permits and either has:~~

~~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~~

~~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.~~

~~2.16.2-13- "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.~~

~~2.17.2-14- "Director" means the Director of the Division of Environmental Protection or his or her designated representative such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.~~

~~2.18.2-15- "Division of Environmental Protection" or "DEP" means the Division of Environmental Protection as defined in that division of the West Virginia Department of Commerce, Labor and Environmental Resources which is created by the provisions of W. Va. Code §§22-1-1 et seq.~~

~~2.19. "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 twenty-five (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.~~

~~2.20.2-16- "Emissions" refers to the release, escape, or discharge of air pollutants into the air.~~

~~2.21.2-17- "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated pollutant.~~

2.22.2-39- "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator of the United States Environmental Protection Agency (USEPA) including those requirements developed pursuant to 40 CFR Parts 60, ~~and 61~~ and 63, 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 ~~regulation~~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.

2.23.2-18- "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

2.24.2-19- "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).

2.25.2-20- "Intrasource pollutants" means air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.

2.26.2-21- "Lowest achievable emission rate (LAER)" means, for any source, that rate of emissions based on the following, whichever is more stringent:

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

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

This term applied to a new or modified emissions unit, means the lowest achievable emission rate for such emissions unit within the 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 applicable new source standards of performance.

2.27.2-22- "Major modification" means any physical change in or change in the method of operation of a major stationary source which results in a significant net emissions increase of any regulated pollutant.

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

- a. Routine maintenance, repair and replacement;
- b. 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;
- c. Use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act of 1977, as amended;
- d. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- e. Use of an alternative fuel or raw material by a stationary source which:

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 regulationsrules approved pursuant to 40 CFR 51 Subpart I or 40 CFR 51.166; or

B. The source is approved to use under any permit issued under this regulationrule;

f. 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 regulationsrules approved pursuant to 40 CFR 51 Subpart I or 40 CFR 51.166;

g. Any change in ownership at a stationary source.

h. The addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the Director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except;

A. When the Director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I, if any; and

B. The Director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

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

A. The State Implementation Plan; and

B. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

~~2.28.2-40-~~ "Major modification for ozone" means a major modification for VOC and/or NO<sub>x</sub>.

~~2.29.2-23-~~ "Major stationary source" means:

a. Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated pollutant; or

b. Any physical change that would occur at a stationary source not qualifying under paragraph ~~2.29.a.2-23-a-above~~, as a major stationary source if the change would constitute a major stationary source by itself.

c. Notwithstanding the major source size specified in paragraph ~~2.29a.2-23.a.of this regulation~~, the following source sizes are also defined as major stationary sources:

A. 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>.

B. 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>.

C. 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>.

D. In serious carbon monoxide nonattainment areas, sources which emit or have the potential to emit 50 tons per year or more of carbon monoxide.

E. 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.

2.30.2-41- "Major stationary source for ozone" means a major stationary source of VOC and/or NO<sub>x</sub>.

2.31.2-24- "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.

2.32.2-25- "Necessary pre-construction approvals or permits" means, for the purposes of this regulation rule, those permits or approvals required under federal air quality control laws or regulations and air quality control laws and regulations rules of the State of West Virginia. Where a consent order is required to be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the United States Environmental Protection Agency approves such consent order for inclusion in the State Implementation Plan.

2.33.2-26- "Net emissions increase" means the amount by which the sum of the following exceeds zero:

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

b. Any other increases and decreases in actual emissions from the source that are contemporaneous with the particular change and are otherwise creditable.

A. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five (5) years before construction on a particular change commences, and

(b) The date that the increase from the particular change occurs.

B. An increase or decrease in actual emissions is creditable only if the chief Director has not relied on it in issuing a permit for the source under this regulation rule which permit is in effect when the increase in actual emissions from the particular change occurs.

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

D. A decrease in actual emissions is creditable only to the extent that:

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

(b) It is federally enforceable and enforceable by the chief Director at and after the time that actual construction on the particular change begins;

(c) The chief Director has not relied on it in issuing any permit under this regulation rule, in demonstrating attainment of the NAAQS, or in a demonstration of reasonable further progress; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

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

2.34.2-27- "Nonattainment area" means for the purpose of this regulation rule, those areas designated in accordance with section 107 of the Clean Air Act as not having attained National Ambient Air Quality Standards 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 rules. These categories are as follows:

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

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

c. PM<sub>10</sub> nonattainment areas may be designated as Moderate or Severe.

2.35.2-28- "Offset", and "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 pounds per hour and/or 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:

- a. In marginal ozone nonattainment areas, 1.1 to 1.
- b. In moderate ozone nonattainment areas, 1.15 to 1.
- c. In serious ozone nonattainment areas, 1.2 to 1.
- d. In severe ozone nonattainment areas, 1.3 to 1.
- e. In extreme ozone nonattainment areas, 1.5 to 1.

2.36.2-46- "Offset ratio" means the ratio of total emission reductions to total emission increases, for any specific pollutant.

2.37.2-42- "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 50.

2.38.2-44- "Particulate matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.39.2-29- "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.

2.40. "Pollution control project" means any activity or project undertaken at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

- a. The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

b. An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including but not limited to natural gas or coal reburning, or the co-firing of natural gas and other fuels for the purpose of controlling emissions;

c. A permanent clean coal technology demonstration project conducted under Title II, section 101(d) of the Further Continuing Appropriations Act of 1985 (section 5903(d) of Title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for USEPA.

d. A permanent clean coal technology demonstration project that constitutes a repowering project.

2.41.2-30: "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 chief Director in any permit and/or consent order issued by the United States Environmental Protection Agency or by the chief Director. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.42.2-31: "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 chief Director or USEPA for the purpose of ensuring attainment of National Ambient Air Quality Standards "(NAAQS)" by the applicable statutory deadline.

2.43.2-32: "Regulated pollutant" means for the purpose of this regulation rule any pollutant for which the commission Director has promulgated an Ambient Air Quality Standard, volatile organic compounds and nitrogen oxides.

2.44. "Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste

reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

a. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

b. The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection 2.44. and is granted an extension under section 409 of the Clean Air Act.

2.45. "Representative actual annual emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of a unit, (or a different consecutive two-year period within ten (10) years after that change, where the Director determines that such period is more representative of normal source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the Director shall:

a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the Director or USEPA, and compliance plans under Title IV of the Clean Air Act; and

b. Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

2.46.2-33: "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section rule, 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 off-site support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle or from a train.

2.472-34- "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: (See Table 45-19A at the end of this regulationrule).

2.48.2-35- "Significant impact" means an increase in the ambient air concentration for a particular pollutant as follows: (See Table 45-19B at the end of this regulationrule.)

2.49.2-36- "Source" or "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.50.2-45- "TSP" or "Total suspended particulate matter" means particulate matter as measured by the method described in Appendix B of 40 CFR 50.

2.51. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five (5) years or less, and which complies with the State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated.

2.52.2-37- "Temporary source", and "Sources of temporary emissions", means for a source located in a nonattainment area and subject to this regulationrule, those emissions occurring for a period of time less than two years.

2.53.2-47- "USEPA" means the United States Environmental Protection Agency.

2.54.2-43- "Volatile organic compounds (VOC)" excludes each of the following compounds, unless the compound is subject to an emission standard under section 111 of the Clean Air Act:

- Methane
- Ethane
- Methylene Chloride
- 1,1,1-Trichloroethane (Methyl Chloroform)
- Trichlorotrifluoroethane (CFC-113) (Freon 113)
- Trichlorofluoromethane (CFC-11)
- Dichlorodifluoromethane (CFC-12)
- Chlorodifluoromethane (CFC-22)
- Trifluoromethane (FC-23)
- Dichlorotetrafluoroethane (CFC-114)
- Chloropentafluoroethane (CFC-115)
- Dichlorotrifluoroethane (HCFC-123)
- 2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)

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- Pentafluoroethane (HFC-125)
- 1,1,2,2-Tetrafluoroethane (HFC-134)
- Tetrafluoroethane (HFC-134a)
- Dichlorodifluoroethane (HCFC-141b)
- Chlorodifluoroethane (HCFC-142b)
- 1,1,1-Trifluoroethane (HCFC-143a)
- 1,1-Difluoroethane (HFC-152a)
- Cyclic, branched, or linear, completely fluorinated alkanes
- Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
- Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
- Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine
- Any other compound excluded from the definition of VOC by USEPA and the commission or Director.

Other words and phrases used in this regulation rule, unless otherwise indicated, have the meaning ascribed to them in ~~Chapter 16, Article 20, section 2, of the Code of West Virginia, 1931, as amended~~ W. Va. Code §22-5-2.

**§45-19-3. Applicability.**

3.1. This regulation rule applies to all major stationary sources and major modifications to major stationary sources proposing to construct anywhere in an area which is designated nonattainment as of the date of issuance of the permit. This regulation rule also applies to all proposed major stationary sources and to all major modifications to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. This regulation rule only applies to such proposed major stationary sources or major modifications when the expected pollutant, when discharged, would require classification of such proposed source or modification as a major stationary source or major modification and when the expected pollutant is the same pollutant for which the area of location or significant impact was designated nonattainment. Sections 1., 2., 10., and 18. ~~of this regulation~~ also apply to all major stationary sources located within the State.

3.2. The determination under this regulation rule of whether such a source will cause a violation of a NAAQS or a significant impact shall be made by the chief Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

a. The requirements of this regulation rule applicable for major sources of  $PM_{10}$  also apply to major stationary sources of  $PM_{10}$  precursors, except where a determination has been made to the satisfaction of the chief Director and USEPA that such sources do not contribute significantly to  $PM_{10}$  levels which exceed the standard in the area.

b. The requirements of this regulationrule applicable for major stationary sources of VOC also apply to major stationary sources of NO<sub>x</sub>, except in the case of those sources of NO<sub>x</sub> for which a determination has been made to the satisfaction of the chiefDirector and USEPA that no net air quality benefit will occur as a result of NO<sub>x</sub> reductions from the sources concerned.

3.3. This regulationrule applies to portable facilities intending to locate or relocate anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area. If the chiefDirector makes a determination of applicability pursuant to subsection 3.2., then such portable facilities shall be considered as a new major stationary source for all purposes of this regulationrule and location or relocation of such source shall be considered construction.

3.4. Sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, or emissions resulting from the construction phase of a new source may be granted an exemption from the requirements of this regulationrule by the chiefDirector upon a demonstration by such source that such source will not significantly interfere with reasonable further progress toward attaining and maintaining the applicable NAAQS, except, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

3.5. Any new or modified source to which this regulationrule is applicable shall not begin actual construction until all necessary pre-construction approvals and permits, including the permit under this regulationrule, have been issued.

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

4.1. a. Upon determination by the chiefDirector 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:

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

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 Clean Air Act

and W. Va. Code §§22-5-1 et seq. ~~Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended~~, or the applicable regulations, or is in compliance with a compliance program or a court decree which is federally enforceable and enforceable by the chiefDirector;

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 ~~2.35.2-28 of this regulation~~. Only intrapollutant emission offsets are acceptable;

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>. Fulfillment of subparagraph 4.1.a.C. ~~above~~ and subsection 8.2. ~~of this regulation~~ will be adequate to meet this condition.

b. Upon determination by the chiefDirector 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 chiefDirector 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 chiefDirector, the chiefDirector shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

c. 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.

**§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 chiefDirector 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.

**§45-19-6. Exemptions from Certain Conditions.**

6.1. a. The chief Director, upon petition by the applicant, may exempt the following sources from the requirements of subparagraphs 4.1.a.C. and D., and section 5. ~~of this regulation~~:

A. Sources which must switch fuels:

- (a) due to lack of adequate fuel supplies; or
- (b) where a source is required to be modified as a result of future regulation and no exemption from such regulation is available to the source.

b. Such exemptions may be granted only if:

A. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with subparagraphs 4.1.a.C. and D. and section 5. ~~of this regulation~~, and that such efforts were unsuccessful; and

B. The applicant has secured all reasonably available emission offsets; and

C. The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's commitment to reasonable further progress will not be adversely affected.

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

7.1. a. For the existing source providing the emission offsets, the baseline for determining credit for emission offsets shall be determined in accordance with USEPA's "Emission Trading Policy Statement" as published in the Federal Register at 51FR43814.

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

c. The chief Director may specify other averaging periods, such as tons per year, as an alternative to the pounds per hour basis if necessary to carry out the intent of this ~~regulation~~ rule. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be

calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the chiefDirector).

d. Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one (1) to two (2) year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.2. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with subsection 7.1. ~~of this regulation.~~

7.3. 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.

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

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

c. No emission offset credit, based on the allowable emissions for an alternate fuel, to which the existing source commits to switch at some future date, shall be allowed unless the permit contains conditions requiring the use of specific alternative control measures which would achieve the same degree of emission reduction in the event the source switches back to the original fuel at some later date. The applicant shall ensure that adequate long-term supplies of the new fuel are available before emission offset credit for fuel switches shall be granted.

7.5. a. A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels if such reductions are permanent, quantifiable, federally enforceable, and enforceable by the chiefDirector within a permit or order. In addition, such reductions are creditable if they occurred on or after the design year of the most current attainment demonstration.

b. Emission offsets that involve reducing operating hours or production or source shutdowns must be proposed by the applicant in the permit application and embodied in the permit or as more fully set forth in section 9. ~~of this regulation.~~

c. Where an applicant can establish that it shut down or curtailed production less than three (3) years prior to the date of permit application, and the proposed source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the proposed source.

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

8.1. 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 offsets must be obtained from the same nonattainment area as the proposed major source or major modification.

8.2. a. The ~~chief~~Director, by petition, may allow 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:

A. Emission offsets for volatile organic compounds (VOC) and/or  $\text{NO}_x$  will generally be acceptable from sources located within the same ozone nonattainment area or from other ozone nonattainment areas of equal or higher classification which can be shown to cause or significantly contribute to the ozone problem at the proposed new or modified source location;

B. Emission offsets for sources of sulfur dioxide ( $\text{SO}_2$ ), and ~~total suspended~~ particulate (TSP) ~~matter~~ should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

b. If such allowance is granted, as provided for in paragraph 8.2.a. ~~of this regulation~~, the chiefDirector may increase the ratio of the required offsets for such source.

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

d. The appropriate modeling referred to in paragraph 8.2.c. ~~above~~ is as follows:

A. For sulfur dioxide (SO<sub>2</sub>) and ~~total-suspended-particulates (TSP)~~ matter, 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 subparagraph 4.1.a.D. ~~of this regulation~~ 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.

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 subparagraphs 4.1.a.C. and 8.2.a.A. ~~of this regulation~~ will be adequate.

C. (a) Proposed sources of volatile organic compounds (VOC) and/or NO<sub>x</sub> locating in a designated nonattainment area for ozone shall be subject to the provisions of section 4. ~~of this regulation.~~

(b) Proposed VOC and/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. ~~of this regulation.~~

#### §45-19.9. Administrative Procedures for Emission Offset Proposals.

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

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 chief Director 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 allowances must be requested by the applicant and contained, if granted, within the construction permit.

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 United States Environmental Protection Agency approved State Implementation Plan revision in the

neighboring State and must be federally enforceable and enforceable by both such neighboring State and the chief Director and at all participating sources.

9.2. a. The applicant may propose emission offsets which involve:

- A. Reductions from sources controlled by the applicant; and/or
- B. Reductions from neighboring sources not controlled by the applicant.

b. 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.

9.3. Any emission offset proposal described in subsection 9.2. ~~above~~ 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 ~~Chapter 16, Article 20, Section 5 (17) of the Code~~ W. Va. Code §22-1-6, which such consent order shall be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan. (Note: See subsection ~~2.32.2-25 of this regulation~~ regarding necessary pre-construction approvals or permits.)

**§45-19-10. Control of Fugitive Emissions.**

10.1. Fugitive emissions associated with a proposed major stationary source or major modification subject to this regulation rule shall not be excluded from the provisions of this regulation rule.

**§45-19-11. Offsetting of Secondary Emissions.**

11.1. The conditions of this regulation rule must be met for secondary emission of a particular pollutant only if the proposed major stationary source or major modification is subject to this regulation rule for emission of that same pollutant.

11.2. For the purposes of this regulation rule, secondary emissions must be shown as specific and well defined, must be quantifiable, and must impact the nonattainment area.

11.3. Secondary emissions shall not be considered in determining whether the significant impact levels as defined in subsection ~~2.48.2-35 of this regulation~~ would be exceeded.

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

A. For ~~total-suspended-particulate-(TSP)~~matter and sulfur dioxide (SO<sub>2</sub>), the areas of impact shall be determined by modeling in accordance with paragraph 8.2.d.

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

b. If the applicant and the chiefDirector disagree as to whether the secondary emissions impact the same area as the direct emissions, the applicant has the burden of proving it is correct by performing the necessary modeling.

**§45-19-12. Permit Requirements for Major Stationary Sources and Major Modifications.**

12.1. No person shall cause, suffer, allow, or permit the construction or relocation of any major stationary source or a major modification to be commenced after the effective date of this regulationrule in any area designated as nonattainment under section 107 of the Clean Air Act, without notifying the chiefDirector 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 as herein provided.

12.2. The owner or operator of the source shall file with the chiefDirector a timely and complete permit application containing sufficient information as, in the judgement of the chiefDirector, will enable the chiefDirector to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules ~~and regulations~~ promulgated by the commission or Director in general and with the requirements of this regulationrule. Such information may include, but not be limited to:

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;

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

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;

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

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

12.3. 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 ~~emission~~ Director, the permit application, and any permit issued pursuant to this ~~regulation~~ rule.

12.4. Within thirty (30) days of the receipt of a permit application for construction or relocation of a major stationary source or for a major modification, the chief Director 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 chief Director received all required information.

12.5. 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 chief Director shall issue such a permit unless the chief Director determines that the proposed major stationary source or major modification has not satisfied the requirements of this ~~regulation~~ 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 ~~regulation~~ rule, in which case the chief Director shall issue an order for the prevention of such construction, modification, or relocation.

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

12.7. The chief Director may impose any reasonable conditions as part of a granted construction, modification, or relocation permit. Such conditions may include, but not be limited to, the submission of periodic progress or operation reports, the provisions of a suitable sampling site, the installation of pollutant

monitoring devices, and the operation and maintenance of ambient air quality monitoring stations.

#### **§45-19-13. Public Review Procedures.**

13.1. After completing the review of a complete application, the chief Director shall make a preliminary determination whether a permit should be approved, approved with conditions, or disapproved.

13.2. The chief Director shall make available in at least one location in the region in which the proposed source would be constructed a copy of all materials the applicant submitted (excluding data entitled to protection as confidential information under the W. Va. Code and any regulations 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.

13.3. The chief Director 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.

13.4. The chief Director 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.

13.5. Public comments submitted within thirty (30) days after the chief's Director'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 chief Director before making a final decision on the approvability of the application. The chief Director shall make copies of all comments available for public inspection in the same locations where the chief Director made available preconstruction information relating to the proposed source or modification.

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

13.7. The chiefDirector 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 chiefDirector made available preconstruction information and public comments relating to the proposed source or modification.

**§45-19-14. Public Meetings.**

14.1. Public meetings to receive comments on permit applications shall be held when the chiefDirector 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.

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

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

**§45-19-15. Permit Transfer, Cancellation, and Responsibility.**

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

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

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

15.2. The chiefDirector shall ~~cancel or suspend~~ or revoke a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the chiefDirector, at the chief'sDirector'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 chief'sDirector's request.

15.3. The chief Director may ~~cancel or suspend~~, modify, or revoke a permit if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to.

15.4. 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 USEPA or the chief Director, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation), shall become subject to the requirements of this regulation rule as though construction had not yet commenced on the source or modification.

**§45-19-16. Disposition of Permits.**

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

**§45-19-17. Requirements for Air Quality Models.**

17.1. All estimates of ambient concentrations required under this regulation rule shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) (EPA-450/2-78-027R), ~~and~~ Supplement A (1987) and Supplement B (1993).

17.2. Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986), ~~and~~ Supplement A (1987) and Supplement B (1993) 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.

**§45-19-18. Emission Trading Plans for Intrasource Pollutants.**

18.1. The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of emissions control requirements. No such emission trading proposal shall be approved or allowed to vary or alter New Source Performance Standards (40 CFR Part 60), National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61), any standards under 40 CFR Part 63, or any source-

specific emission limitations established under 45CSR13, 45CSR14, ~~the commission's pre-construction review regulations and~~ 45CSR27, and this rule.

18.2. It is the responsibility of the owner or operator of the source to develop its specific emission trading proposal. The owner or operator also has the burden to demonstrate to the satisfaction of the chiefDirector that the proposed emission trading proposal is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards or applicable regulations.

18.3. The chiefDirector shall not approve any emission trading proposal without first giving due notice and holding a public hearing, on a case-by-case basis. Such approved emission trading proposal shall be embodied in a consent order as provided in W. Va. Code ~~§16-20-5(17)~~ W. Va. Code §22-1-6, which such consent order shall be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan.

18.4. Any such emission trading proposal must meet all requirements of USEPA's "Emission Trading Policy Statement" as published in the Federal Register at 51 FR 43814.

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

19.1. For sources subject to the permitting requirements of this regulationrule, the provisions of 45CSR13 - "Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation" do not apply, provided, however, that the base permit application fee of \$1,000 under paragraph 3.4.a. of 45CSR22 shall apply to such sources in addition to other applicable fees.

#### **§45-19-20. Severability.**

20.1. The provisions of this regulationrule are severable and if any provision or part thereof shall be held invalid, unconstitutional, or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sections, or parts of this regulationrule or their application to any persons or circumstances.

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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 NO <sub>x</sub>
Ozone, serious and severe nonattainment areas	25	tons of VOC or NO <sub>x</sub> determined over a consecutive 5 year period
Ozone, extreme nonattainment areas	zero	tons of VOC or NO <sub>x</sub>
Lead:	0.6	tpy

TABLE 45-19B

Pollutant:	Averaging time (hours)				
	Annual	24	8	3	1
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>