

WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45CSR19
RULE TYPE: Legislative; CITE AUTHORITY Chapter 16, Article 20, Section 5
AMENDMENT TO AN EXISTING RULE: YES NO
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 45CSR19

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: June 23, 1992 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Conference Room
WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Same as Above.

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


G. Dale Farley, Director

530

45CSR19

SUMMARY

45CSR19 was promulgated by the Commission on April 27, 1983 and became effective on May 27, 1983. The purpose of this regulation is to register and evaluate proposed new major stationary sources or major modifications which would locate in an area with air quality which has been 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 would result in an overall net air quality benefit. This regulation has been revised primarily due to changes in major source size definitions and emission offset ratio requirements included in Title I of the 1990 Clean Air Act Amendments.

45CSR19 has not been amended since 1983, while the federal regulations governing the content of such rules have changed significantly. As a result, most of the definitions have been modified or replaced to better conform with the language required by the current federal New Source Review regulations. Additional language has been inserted to better define permit application requirements and public review procedures.

Also, the time frame for permit review has been extended from ninety (90) days to twelve (12) months, based on recent changes to Chapter 16, Article 20 which eliminated the previous ninety (90) day statutory permit review period.

West Virginia



DEPARTMENT OF COMMERCE,
LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol

Charleston, West Virginia 25305

304/348-3255

April 27, 1992

G. Dale Farley, Director
1558 Washington Street, E.
Charleston, West Virginia 25305

RE: Air Pollution Control Commission - Procedural Rules,
Title 45, Series 19

Dear Dale:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb

B:RUL-APC4,CJB

45CSR19

TITLE 45
LEGISLATIVE RULES
AIR POLLUTION CONTROL COMMISSION

SERIES 19

REQUIREMENTS FOR PRE-CONSTRUCTION REVIEW, DETERMINATION
OF EMISSION OFFSETS FOR PROPOSED NEW OR MODIFIED STATIONARY
SOURCES OF AIR POLLUTANTS AND ~~BUBBLE-CONCEPT~~ EMISSION TRADING FOR
INTRASOURCE POLLUTANTS

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SECRETARY OF STATE

§45-19-1. General.

1.1. Scope. -- It is the intent of the Commission that all applications filed by any person to construct major new or modified stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the pre-construction review procedures and conditions of the Clean Air Act ~~Amendments of 1977~~ as amended and this regulation.

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 Commission will be met.

Further, it is the intent of the Commission to extend to the owners or operators of existing sources an alternative emission reduction concept, called the ~~"Bubble-Concept"~~ "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 ~~the-bubble-concept~~ 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 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

1.3. Filing Date. -- ~~April 27, 1983~~

1.4. Effective Date. -- ~~May 27, 1983~~

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

§45-19-2. Definitions.

2.1. "Actual Emissions"; ~~shall mean the actual rate of emissions of a pollutant from a facility or source using actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which such production rate shall be on a pounds per hour basis and which such selected time period shall be a two-year period unless a determination is made by the Director that a different production rate or time period is more representative of normal operation or is necessary to carry out the intent of this regulation. For any facility or source which has not begun normal operations, actual emissions equal the potential to emit of the facility or source on the date of filing of the application to construct.~~ 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 Director 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 Director may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

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

2.2. "Allowable Emissions"; ~~shall mean the emissions rate calculated using the maximum rate capacity of the source and the most stringent of the following:~~

~~(a) The applicable regulations for such source; or,~~

~~(b) The emissions rate specified as a permit condition;~~

~~(c) Any other legal requirements enforceable by the Commission under Chapter Sixteen, Article Twenty of the West Virginia Code and by the United States Environmental Protection Agency (EPA) under Section 113 of the Clean Air Act.~~ means the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or limits by the Commission 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;

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.

2.3. "Applicable Regulations"; ~~shall mean means~~, for the purpose of this regulation, the West Virginia Administrative Regulations of the Air Pollution Control Commission as promulgated pursuant to the Code of West Virginia, of 1931, as amended, and regulations of the Environmental Protection Agency promulgated pursuant to the Clean Air Act.

2.4. "Applicant"; ~~shall mean means~~ any person who makes application to the Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of this regulation.

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

~~2.6. -- "Air Quality Control Region (AQR)"; is defined in West Virginia as follows:~~

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

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

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

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

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

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

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

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

~~Region IX -- made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Mitroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;~~

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

2.6. "Air Pollution", 'statutory air pollution', has the meaning ascribed to it in Section Two of the West Virginia Code 16-20, as amended.

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

2.8. "Begin Actual Construction"; ~~shall mean~~ means, in general, initiation of physical on-site construction activities on an emissions ~~facility or source~~ unit which are of a permanent nature ~~other than preparatory activities.~~ 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~~ operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

2.9. "Code"; ~~shall mean~~ 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.

2.10. "Commission"; ~~shall mean~~ means the West Virginia Air Pollution Control Commission.

2.11. "Commence"; ~~shall mean~~ 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) 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) b. Entered into binding agreements or contractual obligations, which cannot be ~~cancelled~~ 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.

2.12. "Construction"; ~~shall mean~~ 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.

2.13. "Director"; ~~shall mean~~ means the Director of the West Virginia Air Pollution Control Commission.

2.14. "Emissions"; ~~shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are defined and quantifiable and result from activities related to such source or facility.~~ refers to the release, escape, or discharge of air pollutants into the air.

2.15. "Facility"; ~~shall mean an identifiable piece of process equipment. -- A source is composed of one or more pollutant emitting facilities.~~ "Emissions Unit" means

any part of a stationary source which emits or would have the potential to emit any regulated pollutant.

2.16. "Fugitive Emissions"; ~~shall mean~~ means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

2.17. "Intrapollutant Emission Offsets"; ~~shall mean~~ means that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., ~~hydrocarbon~~ VOC increases may not be offset against SO₂ reductions, or coke plant particulate matter may not be offset against boiler fly ash, or NOx may not be offset against VOC).

2.18. "Intrasource Pollutants"; ~~shall mean~~ means air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.

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

(a) 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) 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 ~~facility~~ emissions unit, means the lowest achievable emission rate for such ~~facility~~ emissions unit within the source. In no event shall the application of this term permit a proposed new or modified ~~facility~~ stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

2.20. "Major Modification"; ~~shall mean~~ means any physical change in or change in the method of operation of a major stationary source ~~that would result which results~~ in a significant net emissions increase of any regulated pollutant ~~subject to regulation by the Commission. -- Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.~~

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

(a) a. Routine maintenance, repair and replacement;

(b) 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)~~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)~~d. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

~~(e)~~e. Use of an alternative fuel or raw material by a stationary source which:

~~(1)~~A. The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any ~~legally~~legally 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 51-18 Subpart I or 40 CFR 51.24166; or

~~(2)~~B. The source is approved to use under any permit issued under this regulations ~~approved pursuant to this section~~;

~~(f)~~f. An increase in the hours of operation or in the production rate, unless such change is prohibited under any ~~legally~~legally federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51-18 Subpart I or 40 CFR 51.24166;

~~(g)~~g. Any change in ownership at a stationary source.

2.21. "Major Stationary Source"; ~~shall mean~~ means:

~~(a)~~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 ~~subject to regulation by the Commission~~; or

~~(b)~~b. Any physical change that would occur at a stationary source not qualifying under Section Paragraph 2.21(a).a. above as a major stationary source if the change would constitute a major stationary source by itself.

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

c. Notwithstanding the major source size specified in Paragraph 2.21.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 NOx.

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 NOx.

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 NOx.

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 PM₁₀ nonattainment areas, sources which emit or have the potential to emit 70 tons per year or more of PM₁₀ or PM₁₀ precursors.

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

2.23. "Necessary Pre-construction Approvals or Permits"; ~~shall mean~~ means, for the ~~purpose~~purposes of this regulation, those permits or approvals required by ~~the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder~~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 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.

2.24. "Net Emissions Increase"; ~~shall mean~~ means the amount by which the sum of the following exceeds zero:

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

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

~~(1)~~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.

~~(2)~~B. An increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit for the source under this regulation which permit is in effect when the increase in actual emissions from the particular change occurs.

~~(3)~~C. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

~~(4)~~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 Commission under the Code and by EPA under Section 113 of the Clean Air Act at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing any permit under this regulation, 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.

~~(5)~~E. An increase that results from a physical change at a source occurs when the emissions facility unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement facility unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

2.25. "Nonattainment Area"; ~~shall mean~~ means for the purpose of this regulation, those areas designated ~~by the Commission~~ in accordance with Section 107~~(d)~~ 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 PM₁₀ 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:

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. PM₁₀ nonattainment areas may be designated as Moderate or Severe.

2.26. "Offset", and "emission offset"; ~~shall mean~~ means an emission reduction of a given pollutant achieved at an existing source (or facility emissions unit within such source) that allows for the emission of such given pollutant at a different proposed source (or facility emissions unit within such proposed source); provided that the amount of reduction in emissions at the existing source (or facility 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 facility 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 shall also mean also means an emission reduction of a given pollutant achieved at a facility unit within an existing source that allows for the emission of such given pollutant at a different facility 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.

2.27. "Person"; ~~shall mean~~ 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.

2.28. "Potential to Emit"; ~~shall mean~~ 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 legally federally enforceable or is enforceable by the Commission in any permit and/or consent order issued under the Code and by the United States Environmental Protection Agency under Section 113 of the Clean Air Act or by the Commission. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.29. "Reasonable Further Progress"; ~~shall mean~~ means the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure areas are required pursuant to Part D of the 1990 Clean Air Act Amendments or which are required by the Commission or USEPA for the purpose of ensuring attainment of National Ambient Air Quality Standards "(NAAQS)" by the applicable statutory deadline.

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

2.3130. "Secondary Emissions"; ~~shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, but do not come from the source itself.~~

~~Secondary emission may include, but are not limited to:~~

~~(a) Emissions from vessels, trains, or motor vehicles coming to or from the source; and~~

~~(b) Emissions from off-site support emissions units which would be constructed or would otherwise increase emissions as a result of the construction or modification of a major source. means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions 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 also include hoteling emissions from marine vessels while at dockside. Secondary emissions do not include any emissions which come directly from any mobile source which is regulated under Title II of the 1990 Clean Air Act Amendments.~~

2.3231. "Significant"; ~~shall mean~~ 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 regulation).

2.3332. "Significant Impact"; ~~shall mean~~ means an increase in the ambient air quality concentration for a particular pollutant as follows: (See Table 45-19B at the end of this regulation.)

2.3433. "Source, Stationary Source"; ~~shall mean all structures, buildings, facilities, equipment, or installations which are of the same industrial grouping (i.e., the same two digit code as described in the Federal Standard Industrial Classification Manual, 1972, amended 1977) and located on one or more contiguous or adjacent properties and which are owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.~~ means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.

2.3534. "Temporary Source", and "sources of temporary emissions", ~~shall mean~~ means for a source located in a nonattainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

2.35. "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), including the emissions from marine vessels while at dockside. The emissions from marine vessels associated with Outer Continental Shelf (OCS) sources (both at dockside and while en route to and from (within 25 miles of) an OCS source) are considered direct emissions of the OCS source. 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, 1972, as amended by the 1977 Supplement (United States Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

2.36. "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, 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, 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.

2.37. "Major Modification for Ozone" means a major modification for VOC and/or NOx.

2.38. "Major Stationary Source for Ozone" means a major stationary source of VOC and/or NOx.

2.39. "PM₁₀" 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.

2.40. "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)
- Pentafluoroethane (HFC-125)
- 1,1,2,2-Tetrafluoroethane (HFC-134)
- Tetrafluoroethane (HFC-134a)
- Dichlorofluoroethane (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

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

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

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

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

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section 2, of the Code of West Virginia, 1931, as amended.

§45-19-3. Applicability.

3.1. This regulation ~~shall apply~~ applies to all major stationary sources ~~intending to locate in a designated nonattainment area and to all major modifications to any existing sources located in a designated nonattainment area~~ 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 ~~shall also apply~~ 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 ~~shall only apply~~ 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, 12, and 13 and 18 of this regulation shall also apply to all major stationary sources located within the State.

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

a. The requirements of this regulation applicable for major sources of PM₁₀ also apply to major stationary sources of PM₁₀ precursors, except where a determination has been made to the satisfaction of the Commission and USEPA that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area.

b. The requirements of this regulation applicable for major stationary sources of VOC also apply to major stationary sources of NOx, except in the case of those sources of NOx for which a determination has been made to the satisfaction of the Commission and USEPA that the net air quality benefits are greater in the absence of NOx reductions from the sources concerned.

3.3. This regulation ~~shall apply~~ 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 Director 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 regulation 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, emissions resulting from the construction phase of a new source, or resource recovery facilities utilizing municipal solid waste to provide more than fifty percent (50%) of the heat input for generating steam or electricity may be granted an exemption from the requirements of this regulation by the Commission 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.~~

3.54. Any new or modified source to which this regulation is applicable shall not begin actual construction until all necessary pre-construction approvals and permits, including the permit under this regulation, 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)a. Upon determination by the Director 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:

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

~~(2)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 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 Commission under the Code and Section 113 of the Clean Air Act;

~~(3)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 NOx must equal or exceed those specified in Subsection 2.26 of this regulation. Only intrapollutant emission offsets are acceptable;

~~(4)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 NOx. Fulfillment of Subsection Subparagraph 4.1(a)(3).a.C. above and Subsections 8.2(a) and (d) of this regulation will be adequate to meet this condition.

~~(b)b.~~ Upon determination by the Director 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 Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall 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 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 Director 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)~~a. The Commission, upon petition by the applicant, may exempt the following sources from the requirements of ~~Subsections~~Subparagraphs 4.1~~(a)~~~~(3)~~.a.C. and ~~(4)~~D., and Section 5 of this regulation:

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

~~(2)~~A. Sources which must switch fuels:

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

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

~~(b)~~b. Such exemptions may be granted only if:

~~(1)~~A. The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with ~~Subsections~~Subparagraphs 4.1~~(a)~~~~(3)~~.a.C. and ~~(4)~~D. and Section 5 of this regulation, and that such efforts were unsuccessful; and

~~(2)~~B. The applicant has secured all reasonably available emission offsets; and

~~(3)~~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.

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

SOURCE CATEGORIES WHICH
MUST INCLUDE FUGITIVE EMISSIONS

- Coal Cleaning Plants (with thermal dryers)
- Kraft Pulp Mills
- Portland Cement Plants
- Primary Zinc Smelters
- Iron and Steel Mills
- Primary Aluminum Ore Reduction Plants
- Primary Copper Smelters
- Municipal Incinerators Capable of Charging More Than 250 Tons of Refuse Per Day
- Hydrofluoric, Sulfuric, or Nitric Acid Plants
- Petroleum Refineries

- Lime Plants
- Phosphate Rock Processing Plants
- Coke Oven Batteries
- Sulfur Recovery Plants
- Carbon Black Plants (furnace process)
- Primary Lead Smelters
- Fuel Conversion Plants
- Sintering Plants
- Secondary Metal Production Plants
- Chemical Process Plants
- Fossil Fuel Boilers (or combination thereof) Totaling More Than 250 Million British Thermal Units Per Hour Heat Input
- Petroleum Storage and Transfer Units With a Total Storage Capacity Exceeding 300,000 Barrels
- Taconite Ore Processing Plants
- Glass Fiber Processing Plants
- Charcoal Production Plants
- Fossil-Fuel-Fired Steam Electric Plants of More Than 250 Million British Thermal Units Per Hour Heat Input
- Ammonium Sulfate Manufacturing Plants
- Asphalt Concrete Plants
- Asphalt Processing/Roofing Manufacturing Plants
- Bulk Gasoline Terminals
- Dry Cleaning Plants
- Glass Manufacturing Plants
- Grain Elevators
- Graphic Arts (Rotogravure) Plants
- Hazardous Waste Incineration Facilities
- Lead-Acid Battery Manufacturing Plants
- Mineral Processing Plants
- Municipal Incinerators (or combination thereof) Capable of Charging More Than 50 Tons of Refuse Per Day
- Natural Gas Processing Facilities
- Outer Continental Shelf Sources as Defined in the Clean Air Act Amendments
- Phosphate Fertilizer Production and Storage Facilities
- Residential Wood Heaters
- Rubber Tire Manufacturing Plants
- Sewage Treatment Plants
- Sulfur Recovery Plants
- Synthetic Fiber Production Plants
- Surface Coating and Printing Operations
- Any Other Stationary Source Category Which, as of November 15, 1990, is Being Regulated under Section 110 or 111 of the Clean Air Act.

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

7.1. (a)a. For the existing source providing the emission offsets, the~~The~~ baseline for determining credit for emission offsets will be the lower of the actual or allowable emissions in effect at the time ~~than~~ application to construct or modify a major stationary source is filed.

~~(b)~~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.

~~(e)~~c. The 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. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

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

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

~~(e)~~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. 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 Commission. In addition, such reductions are creditable if they occurred on or after the design year of the most current attainment demonstration.

~~(b)~~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 hereinof this regulation.

~~(e)~~c. ~~Source shutdowns and curtailments in production or operating hours occurring prior to the date the application is filed generally may not be used for emission offset credit. However, where~~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.

7.6. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1,1,1,-Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

§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)~~a. The Commission, 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:

~~(1)~~A. Emission offsets for volatile organic compounds (VOC) and/or NOx will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) ozone nonattainment area or from other ozone nonattainment areas of equal or higher classification which may can be shown to cause or significantly contribute to the ozone problem at the proposed new or modified source location;

~~(2)~~B. Emission offsets for sources of sulfur dioxide (SO₂), 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.

~~(b)~~b. If such allowance is granted, as provided for in Subsection (a), Paragraph 8.2.a. of this Section regulation, the Commission ~~should~~may increase the ratio of the required offsets for such source.

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

(d)d. The appropriate modeling referred to in Section Paragraph 8.2(e).c. above is as follows:

(1)A. For sulfur dioxide (SO₂) and total suspended particulates (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 Subsection Subparagraph 4.1.(a)(4)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.

(2)B. Atmospheric simulation modeling for ozone impacts is not necessary for volatile organic compounds and NO_x. For such pollutants, meeting the requirements of Subsection Subparagraphs 4.1.(a)(3)a.C. and Subsection 8.2.(a)(1)a.A. of this regulation will be adequate.

(3)C. (a) Proposed sources of volatile organic compounds (VOC) and/or NO_x 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_x sources locating within thirty-six (36) hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor shall also be subject to Section 4 of this regulation.

~~(e)--A proposed VOC source may be exempt from these requirements if the applicant can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone.--This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO_x to form additional ozone.~~

§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)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 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)~~b. If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major stationary source or major modification, 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 legally federally enforceable and enforceable by both such neighboring State and the Commission ~~in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act.~~

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

~~(1)~~A. Reductions from sources controlled by the applicant;
and/or

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

~~(b)~~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 Section 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, which such consent order shall be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan. (Note: See Section Subsection 2.23 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 shall not be excluded from the provisions of this regulation.

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

11.1. The conditions of this regulation 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 for emission of that same pollutant.

11.2. For the purposes of this regulation, 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 Section Subsection 2.3332 of this regulation would be exceeded.

11.4. ~~(a)~~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:

~~(1)~~A. For total suspended particulate (TSP) and sulfur dioxide (SO₂), the areas of impact shall be determined by modeling in accordance with ~~Subsection~~Paragraph 8.2~~(d)~~.d.

~~(2)~~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)~~b. If the applicant and the Director 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 regulation in any area designated as nonattainment under Section 107 of the Clean Air Act, without notifying the Director 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 Director a timely and complete permit application containing sufficient information as, in the judgement of the Director, will enable the Director to determine whether such source construction, modification, or relocation will be in conformance with the provisions of any rules and regulations promulgated by the Commission in general and with the requirements of this regulation. Such information may include, but not be limited to:

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 Commission, the permit application, and any permit issued pursuant to this regulation.

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 Director shall determine if the application is complete or if there exists any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the Director received all required information.

12.5. Within twelve (12) months of the receipt of a complete permit application for construction or relocation of a major stationary source or for a major modification, the Director shall issue such a permit unless the Director determines that the proposed major stationary source or major modification has not satisfied the requirements of this regulation, will violate applicable emission standards, will interfere with the attainment or maintenance of applicable ambient air quality standards, or will be inconsistent with the intent and purpose of this regulation, in which case the Director shall issue an order for the prevention of such construction, modification, or relocation.

12.6. When the 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 Director's reasons with reasonable specificity.

12.7. The Director may impose any reasonable conditions as part of a granted construction, modification, or relocation permit. Such conditions may include, but not be limited to, the submission of periodic progress or operation reports, the provisions of a suitable sampling site, the installation of pollutant monitoring devices, and the 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 Director shall make a preliminary determination whether a permit should be approved, approved with conditions, or disapproved.

13.2. The 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 Code and any regulations 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 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 hearing, details concerning the time and place of such a hearing if one has already been scheduled, and notification of the opportunity for comment at a public hearing if such hearing is to be conducted. A public comment period of thirty (30) days shall be provided and so stated in the advertisement.

13.4. The 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 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 hearing to receive comment on such proposed construction, modification, or relocation shall be considered by the Director before making a final decision on the approvability of the application. The Director shall make copies of all comments available for public inspection in the same locations where the Director made available preconstruction information relating to the proposed source or modification.

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

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

§45-19-14. Public Hearings.

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

14.2. The Director or the Director's designee shall preside over such hearings and insure that all interested parties have ample opportunity to present comments. Such hearings 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 hearings, the Director 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 Director for a transfer of a permit previously issued in accordance with this regulation. The Director 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 Director will cancel or suspend a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the Director, at the Director's request, with written proof of a good faith effort that such construction, modification, or relocation has commenced. Such proof shall be provided not later than thirty (30) days after the Director's request.

15.3. The Director may cancel or suspend the permit if the plans and specifications upon which the approval was based and/or the conditions established in the permit are not adhered to.

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 State of West Virginia, 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 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 promulgates changes to this regulation 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 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 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).

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

§45-19-1218. Bubble Concept Emission Trading Plans for Intrasource Pollutants.

1218.1. 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 technology requirements. No bubble concept design such emission trading proposal shall be approved or allowed to vary or alter New Source Performance Standards (40 CFR Part 60) and, National Emissions Standards for Hazardous Air Pollutants (40 CFR Part 61), or any source-specific emission limitations established under the Commission's pre-construction review regulations and 45 CSR 27.

1218.2. It is the responsibility of the owner or operator of the source to develop its specific bubble concept design emission trading proposal. The owner or operator also has the burden to demonstrate to the satisfaction of the Commission that the proposed bubble concept design emission trading proposal is equivalent in emission reduction, enforceability, and environmental impact to existing individual process standards or applicable regulations.

1218.3. The Commission shall not approve any bubble concept design emission trading proposal without first giving due notice and holding a public hearing, on a case-by-case basis. Such approved bubble concept design emission trading proposal shall be embodied in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code.

1218.4. An approved bubble concept design shall be in effect for any such source for a period of no more than three (3) years from the date of issuance for sources located in nonattainment areas and five (5) years for sources located in attainment areas. At the end of such three (3) or five (5) year period, the Commission shall review the bubble concept design for such source and may extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate. 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.

§45-19-13. Discretionary Decisions Made by the Director.

13.1. Any discretionary decision made by the Director as provided herein may be presented to the Commission for review by petition. The consideration of any such review shall be discretionary with the Commission.

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

19.1. For sources subject to the permitting requirements of this regulation, the provisions of 45 CSR 13 - "Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation" do not apply.

§45-19-20. Severability.

20.1. The provisions of this regulation 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 regulation or their application to any persons or circumstances.

45CSR19

TABLE 45-19A

Carbon monoxide:	100	tons per year (tpy)
Nitrogen oxides:	40	tpy
Sulfur dioxide:	40	tpy
Particulate matter:	25	tpy
<u>PM₁₀:</u>	<u>15</u>	<u>tpy</u>
Ozone:	40	tpy of volatile organic compounds
<u>Ozone,</u> <u>marginal and moderate</u> <u>nonattainment areas</u>	<u>40</u>	<u>tpy of VOC or NOx</u>
<u>Ozone,</u> <u>serious and severe</u> <u>nonattainment areas</u>	<u>25</u>	<u>tons of VOC or NOx</u> <u>determined over a</u> <u>consecutive 5 year period</u>
<u>Ozone,</u> <u>extreme nonattainment areas</u>	<u>zero</u>	
Lead:	0.6	tpy

TABLE 45-19B

Pollutant:	Averaging time (hours)				
	Annual	24	8	3	1
SO ₂	1.0 ug/m ³ . . .	5.0 ug/m ³	25.0 ug/m ³		
TSP	1.0 ug/m ³ . . .	5.0 ug/m ³			
<u>PM₁₀</u>	<u>1.0 ug/m³ . . .</u>	<u>5.0 ug/m³</u>			
NO ₂	1.0 ug/m ³				
CO			0.5 mg/m ³		2.0 mg/m ³

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Chapter 16, Article 20, Series 19 - "Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified

Rule Title: Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants

Type of Rule: Legislative Interpretive Procedural

Agency: WV Air Pollution Control Comm. Address: 1558 Washington Street, East Charleston, West Virginia 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ *	\$ *	\$ *	\$ *	\$ *
Personal Services	*	*	*Cost for permitting activities under this rule can range from 0 - \$150,000 depending upon number of applications received.		
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

See attached page.*

3. Objectives of these rules:

See attached page.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See attached page.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

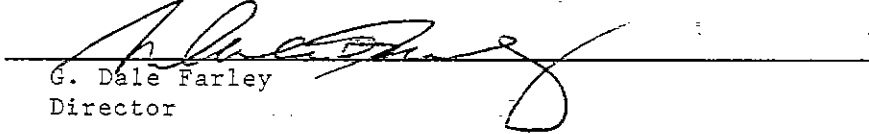
See attached page.

C. Economic Impact on Citizens/Public at Large.

See attached page.

Date: May 8, 1992

Signature of Agency Head or Authorized Representative


G. Dale Farley
Director

Regulation 19 - Fiscal Note

2. Explanation of above estimates:

To process major source permits under 45CSR14 and 45CSR19, the APCC has had to commit 0-3 man-years of effort depending upon the number of permits filed and active in each year. At the 3 man-year level, costs for this activity would be approximately \$40,000 per engineer plus training and transportation expenses and potential contract modeling support (\$50,000 - \$150,000). No significant additional costs or workload, however, are anticipated as a result of the proposed revisions to this regulation per se. Greater rule applicability could result in future years due to area non-attainment redesignations and other new CAA required rules under the Clean Air Act.

3. Objectives of these rules:

To bring the state's air quality rules for preconstruction for major sources and major facility modifications into conformance with federal provisions enacted prior to the enactment of the 1990 Clean Air Act Amendments and into conformance with substantial new provisions in the revised federal Clean Air Act.

4.A. Economic Impact on State Government.

Implementation of the existing rule required under the federal Clean Air Act has resulted in minimal overall costs to date due to limited applicability.

4.B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

The regulation could impact upon the siting and emissions control requirements of major new facilities or major modifications to existing plants in Cabell, Wayne, Kanawha, Putnam, Wood, Hancock and Brooke Counties. Current state permit application fees for new major facilities can range up to \$14,500.

4.C. Economic Impact on Citizens/Public at Large.

Minimal impacts anticipated as a result of proposed regulation revisions.