WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

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

AGENCY: Office of Air Quality
Division of Environmental Protection TITLE NUMBER: 45CSR19

CITE AUTHORITY WV Code §16-20-5

AMENDMENT TO AN EXISTING RULE: YES X 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: ___

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

G. Dale Farley
Chief, Office of Air Quality
Division of Environmental Protection

23.80

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: West Virginia Air Pollution Control Commission

Address: 1558 Washington Street, East

Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	$ *	$ *	$ *	$ *	$ *
Personal Services	*	*	*	*	*
Current Expense					
Repairs and Alterations					
Equipment					
Other					

*Cost for Permitting activities under this rule can range from $0 - $150,000 depending upon number of applications received.

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.

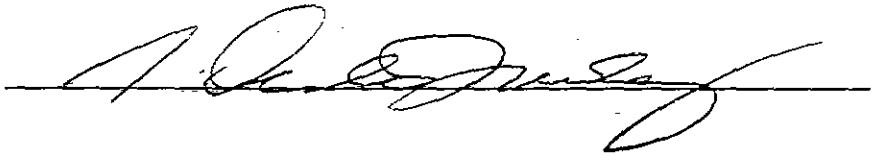
See attached page.

C. Economic impact on citizens/public at large.

See attached page.

Date: August 31, 1992

Signature of agency head or authorized representative:



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.

DATE: August 31, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: G. DALE FARLEY
CHIEF, OFFICE OF AIR QUALITY
DIVISION OF ENVIRONMENTAL PROTECTION

LEGISLATIVE RULE TITLE: 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"

1. Authorizing statute(s) citation WV Code §16-20-5

2. a. Date filed in State Register with Notice of Hearing:

May 8, 1992

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

Class II legal advertisement filed in a newspaper published in each of the Air Quality Control Regions of West Virginia.

c. Date of hearing(s): June 23, 1992

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

Attached X No comments received

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

August 31, 1992

f. Name and phone number of agency person to contact for additional information:

G. Dale Farley, Chief

Office of Air Quality (Phone: 558-2275)

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

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

      N/A

   b. Date of hearing: N/A

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

      N/A

   d. Attach findings and determinations and reasons:

      Attached N/A

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 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.

45CSR19

TITLE 45
LEGISLATIVE RULES
DIVISION OF ENVIRONMENTAL PROTECTION
AS PROMULGATED BY
WEST VIRGINIA 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

§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 Chief 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~~Chief 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, limits established by the Commission or Chief 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;

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~~Chief 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 (AQCR)", is defined in West Virginia as follows:~~

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

~~Region II — made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood.~~

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

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

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

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

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

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

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

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

2.6. "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 then~~ an application to construct or modify a source is filed and as more fully defined in Section 7 ~~hereinof~~ 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 preparator 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. "Chief of Air Quality" or "Chief" means the Chief of the Office of Air Quality or his or her designated representative appointed by the Director of the Division of Environmental Protection pursuant to the provisions of §22-1-1, et seq., of the West Virginia Code.

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

2.~~11~~12. "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~~13. "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~~14. "Director"~~, shall mean~~ means the Director of the ~~West Virginia Air Pollution Control Commission~~Division of Environmental Protection or his or her designated representative.

2.15. "Division of Environmental Protection" or "DEP" means that Division of the Department of Commerce, Labor and Environmental Resources which is created by the provisions of West Virginia Code §22-1-1, et seq.

2.~~14~~16. "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~~17. "~~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~~18. "Fugitive Emissions"~~, shall mean~~ means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

2.~~17~~19. "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 SO_2 reductions, or coke plant particulate matter may not be offset against boiler fly ash, or NOx may not be offset against VOC).

2.~~18~~20. "Intrasource Pollutants"~~, shall mean~~ means air pollutants emitted from within the same source which have comparable physical and chemical characteristics and properties.

2.~~19~~21. "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~~22. "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~~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.~~24~~166; 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~~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.~~24~~166;

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

2.~~21~~23. "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)23.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 2.23.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 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 PM_{10} nonattainment areas, sources which emit or have the potential to emit 70 tons per year or more of PM_{10} or PM_{10} precursors.

2.~~22~~24. "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~~25. "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~~26. "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.

~~(i)~~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~~Chief 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~~Chief ~~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~~Chief 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~~27. "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 PM_{10} are divided into categories, which may have different major source size definitions and offset ratio requirements than in previous regulations. These categories are as follows:

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_{10} nonattainment areas may be designated as Moderate or Severe.

2.2628. "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.

2.2729. "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.

2.2830. "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~~Chief 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 Chief. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.2931. "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~~as are required pursuant to Part D of the 1990 Clean Air Act Amendments or which are required by the Chief 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.~~

2.32. "Regulated Pollutant" means for the purpose of this regulation any pollutant for which the Commission has promulgated an Ambient Air Quality Standard, volatile organic compounds and nitrogen oxides.

2.3133. "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 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.

2.3234. "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).

2.3335. "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.)

2.3436. "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.

2.3537. "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.

2.38. "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).

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, 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.

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

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

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

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)
- 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
- Any other compound excluded from the definition of VOC by USEPA and the Commission.

2.4244. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.4345. "TSP" or "Total Suspended Particulate Matter" means particulate matter as measured by the method described in Appendix B of 40 CFR 50.

2.4446. "Offset Ratio" means the ratio of total emission reductions to total emission increases, for any specific pollutant.

2.4547. "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~~Chief 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 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 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 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 Chief and USEPA that no net air quality benefit will occur as a result 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~~Chief 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, or 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~~Chief 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 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~~Chief 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 Chief~~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 2.28 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~~Chief 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~~Chief 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~~Chief, the ~~Commission~~Chief 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 ~~Director~~Chief 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~~Chief, 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:

~~(i) 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.

§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 ~~the~~an 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.

~~(c)~~c. The ~~Director~~Chief 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~~Chief).

~~(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.

~~(c)~~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 Chief 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)~~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.

~~(c)~~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~~Chief, 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 (SO_2), and total suspended particulate (TSP), should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

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

~~(c)~~c. In order to ensure that the emission offsets will provide a positive net air quality benefit, the ~~Director~~Chief 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~~(c)~~.c. above is as follows:

~~(1)~~A. For sulfur dioxide (SO_2) 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 NOx. 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 NOx 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 NOx 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~~are subject to Section 4 of this regulation.

~~(c) 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~~Chief 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 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 ~~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~~Chief ~~in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act~~ and at all participating sources.

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~~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 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 2.3335 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 (SO_2), 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~~Chief 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 Chief 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 Chief a timely and complete permit application containing sufficient information as, in the judgement of the Chief, will enable the Chief 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 Chief 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 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 Chief shall issue such a permit unless the Chief 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 Chief shall issue an order for the prevention of such construction, modification, or relocation.

12.6. When the Chief 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 reasons with reasonable specificity.

12.7. The Chief 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 shall make a preliminary determination whether a permit should be approved, approved with conditions, or disapproved.

13.2. The Chief 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 Chief 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 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 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 before making a final decision on the approvability of the application. The Chief shall make copies of all comments available for public inspection in the same locations where the Chief made available preconstruction information relating to the proposed source or modification.

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

13.7. The Chief 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 Chief 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 Chief 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 Chief or the Chief'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 Chief 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 Chief for a transfer of a permit previously issued in accordance with this regulation. The Chief 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 Chief shall cancel or suspend a permit if, after eighteen (18) months from the date of issuance the holder of the permit cannot provide the Chief, at the Chief'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's request.

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

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, 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 Chief 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-~~12~~18. ~~Bubble Concept~~Emission Trading Plans for Intrasource Pollutants.

~~12~~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 ~~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.

~~12~~18.2. 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~~Chief 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.

~~12~~18.3. The ~~Commission~~Chief 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, which such consent order shall be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan.

~~12~~18.4. ~~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~~

TABLE 45-19A

Carbon monoxide:	100	tons per year (tpy)
Nitrogen oxides:	40	tpy
Sulfur dioxide:	40	tpy
Particulate matter:	25	tpy
PM_{10}:	15	tpy
~~Ozone:~~	~~40~~	~~tpy of volatile organic compounds~~
Ozone, marginal and moderate nonattainment areas	40	tpy of VOC or NOx
Ozone, serious and severe nonattainment areas	25	tons of VOC or NOx determined over a consecutive 5 year period
Ozone, extreme nonattainment areas	zero	tons of VOC or NOx
Lead:	0.6	tpy

TABLE 45-19B

	Averaging time (hours)				
	Annual	24	8	3	1
Pollutant:					
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			
PM_{10}	1.0 ug/m^3	5.0 ug/m^3			
NO_2	1.0 ug/m^3				
CO			0.5 mg/m^3		2.0 mg/m^3

Ken Hechler
Secretary of State

WEST VIRGINIA REGISTER

Volume IX

Issue 20

May 15, 1992

Pages 970-1008

A Weekly Publication

Administrative Law Division

Judy Cooper
Director

Missy Phalen
Administrative Assistant

Secretary of State
Administrative Law Division
Bldg. 1, Suite 157K
1900 Kanawha Blvd. E.
Charleston, WV 25305-0770

(304)558-6000

CONTENTS

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.

LEGISLATIVE

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

1992 MAY -8 PM 12 50

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 X 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 X

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.

C. Dale Farley, Director

30

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

1992 MAY -8 PM 12 49

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Air Pollution Control Commission TITLE NUMBER: 45CSR29

RULE TYPE: Legislative ; CITE AUTHORITY Chapter 16, Article 20, Sec

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: ___

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR29

TITLE OF RULE BEING PROPOSED: "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions"

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, WV 25311

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

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.

C. Dale Farley, Director

38

West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

1558 Washington Street, East
Charleston, West Virginia 25311

Telephone: (304)348-4022
or (304)348-3286
Fax: (304)348-3287

AGENDA

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION
Conference Room
1558 Washington Street, East
Charleston, West Virginia 25311

June 23, 1992
9:00 a.m.

I. HEARINGS ON PROPOSED AMENDMENTS (REVISIONS) TO REGULATIONS

1. Hearing on Proposed Amendments (Revisions) to Regulation 14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution For the Prevention of Significant Deterioration".

2. Hearing on Proposed Amendments (Revisions) Regulation 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".

3. Hearing on Proposed Regulation 29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

II. HEARINGS ON PROPOSED CONSENT ORDERS (COMPLIANCE PLANS) UNDER WVAPCC REGULATION 27 (45CSR27)

1. Koppers Industries, Inc. - Follansbee

2. G. E. Chemicals, Inc. - Washington

3. E. I. DuPont de Nemours & Company, Inc. - Washington Works

4. Union Carbide Corporation - South Charleston

III. COMMISSION MEETING

1. Further Consideration of Proposed Amendments to Regulation 5 - "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal handling Operations".

2. Director's Report.

3. Such other business as the Commission deems timely and appropriate.

West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

1558 Washington Street, East
Charleston, West Virginia 25311

Telephone: (304)348-4022
or (304)348-3286
Fax: (304)348-3287

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

Upon authorization and promulgation, these legislative rules will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the 1~.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

NOTICE
NOTICE OF PUBLIC HEARING
On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing onproposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 45CSR19 - "Requirements for Preconstruction REview, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

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The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Cabell County Public Library, 455 9th Street Plaza, Huntington, WV.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

LH-665 5-13,20,92

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,
COUNTY OF CABELL, TO-WIT:

I, Connie Rappold being first duly sworn, depose and say that I am Legal Clerk for The Herald-Dispatch, a corporation, who publishes at Huntington, Cabell County, West Virginia, the newspaper: The Herald-Dispatch, a independent newspaper, in the morning seven days each week, Monday through Sunday including New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas; that I have been duly authorized by the Board of Directors of such corporation to execute this affidavit of publication for an on behalf of such corporation and the newspaper mentioned herein; that the legal advertisement attached in the left margin of this affidavit and made a part hereof and bearing number LH-665 was duly published in

The Herald-Dispatch

one time, once a week for 2 successive weeks, commencing with its issue of the 13th day of May, 19 92, and ending with the issue of the 20th day of May, 19 92, and was posted at the East Door of the Cabell Co. Courthouse on the 20th day of May, 1992: that said legal advertisement was published on the following dates: May 13, 20 1992

; that the cost of publishing said annexed advertisement as aforesaid was $65.37; that such newspaper in which such legal advertisement was published has been and is now published regularly, at least as frequently as once a week for at least fifty weeks during the calendar year as prescribed by its mailing permit, and has been so published in the municipality of Huntington, Cabell County, West Virginia, for at least one year immediately preceding the date on which the legal advertisement set forth herein was delivered to such newspaper for publication; that such newspaper is a newspaper of "general circulation" as defined in Article 3, Chapter 59, of the West Virginia Code, within the publication area or areas of the municipality of Huntington, Cabell and Wayne Counties, West Virginia, and ;

that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper on each date published consists of not less than four pages without a cover; and that it is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

Connie Rappold

Taken, subscribed and sworn to before me in my said county this 20th day of May, 19 92

My commission expires May 13, 2002

Carolyn A. Grass
Notary Public
Cabell County,
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
CAROLYN A. GRASS
HC 69, BOX 66-B
CRAB CREEK RD
HENDERSON, WV 25106
MY COMMISSION EXPIRES MAY 13, 2002

10M Form A-135 (867H)

AFFIDAVIT OF PUBLICATION
BECKLEY NEWSPAPERS INC.
BECKLEY, WEST VIRGINIA 25801

March 21, 1992

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

I, Robert E. Zutaut being first duly sworn upon my oath, do depose and say that I am Advertising Manager of Beckley Newspapers Inc., a corporation, publisher of the newspaper entitled The Register-Herald, an Independent newspaper; that I have been duly authorized by the board of directors of such corporation to execute this affidavit of publication; that such newspaper has been published for more than one year prior to publication of the annexed notice described below; that such newspaper is regularly published daily, for at least fifty weeks during the calendar year, in the municipality of Beckley, Raleigh County, West Virginia; that such newspaper is a newspaper of "general circulation," as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area or areas of the aforesaid municipality and county; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price of consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices; that the annexed notice

of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for two successive week (Class Ii), commencing with the issue of the 13th day of May, 1992, and ending with the issue of the 20th day of May, 1992, (and was posted at the _____ on the _____ day of _____); that said annexed notice was published on the following dates: 5/13, 5/20

_____ and that the cost of publishing said annexed notice as aforesaid was $ 29.28

Signed _____
Robert E. Zutaut, Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this 21st day of May 1992

My commission expires March 27, 2001

_____
Notary Public of Raleigh County,
West Virginia

R/H

COPY OF PUBLICATION

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992, beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

Upon authorization and promulgation, these legislative rules will be submitted to the U. S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Raleigh County Public Library, P. O. Box 1876, Beckley, WV.

If you have any questions or comments please contact:
G. Dale Farley
Secretary
West Virginia Air Pollution
Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
5-21-Thu-2-RH

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Kelley Yauns OF

THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER,

PUBLISHED IN THE CITY OF CHARLESTON, KANAWHA COUNTY,

WEST VIRGINIA, DO SOLEMNLY SWEAR THAT THE ANNEXED

NOTICE OF: PUBLIC HEARING

WAS DULY PUBLISHED IN SAID PAPER(S) ON THE DATES

LISTED BELOW, AND WAS POSTED AT THE FRONT DOOR OF THE

COURT HOUSE OF SAID KANAWHA COUNTY, WEST VIRGINIA,

ON THE

13TH DAY OF MAY , 1992 .

DATES PUBLISHED:

05/12/92 DAILY MAIL 05/19/92 DAILY MAIL

SUBSCRIBED AND SWORN TO BEFORE ME THIS

20TH DAY OF MAY , 1992 .

Frances A. Hartman

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE $ 46.81

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
FRANCES A. HARTMAN
2400 Unruh Ave Road
Charleston, West Virginia 25314
My Commission Expires Dec. 19, 1999

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 — "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 — "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

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The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Library of the West Virginia Air Pollution Control Commission located at the address below.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
(900278)

PUBLISHER'S CERTIFICATE

VS.

STATE OF WEST VIRGINIA,

COUNTY OF HARRISON

I, Deborah S. Veltri

Classified Office Manager of THE CLARKSBURG EXPONENT, a newspaper of general circulation published in the City of Clarksburg, County and State aforesaid, do hereby certify that the annexed

NOTICE OF PUBLIC HEARING

was published in said THE CLARKSBURG EXPONENT once a week for 2 successive weeks,

commencing on the 12th day of May 19 92

and ending on the 19th day of May 19 92

The publisher's fee for said publication is $ 19.60

Given under my hand this 19th day of May 19 92

Deborah S. Veltri
Classified Office Mgr. of The Clarksburg Exponent

SEAL

Subscribed and sworn to before me this 19th day of May, 19 92

Notary Public in and for Harrison County, WV.

My commission expires on the 24th day of October 1993.

Form CA-15 E

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 45CSR19 - "Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions"

Upon authorization and promulgation, these legislative rules will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the office of the West Virginia Air Pollution Control Commission, North Central Regional Office, 517½ East Park Avenue, Fairmont, WV.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia
Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

State of West Virginia, County of Randolph, ss.

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 — "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration," 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," and 45CSR29 — "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions."

Upon authorization and promulgation, these legislative rules will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia Air
Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

S—11, 18

I, James Hoffman, Publisher of THE INTER-MOUNTAIN, a newspaper published at Elkins, in said county, do hereby certify that the annexed advertisement was published on the following dates:

May 11 May 18 _____ _____

19 92 as required by law.

Given under my hand this 18 day of May 19 92

James Hoffman
Publisher

Printer's Fee: $ 35.25

e me this 18 day of May, 19 92

Notary Public

My Commission Expires the 24 day of Expire 19 94.

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14-"Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 45CSR19-"Requirements for Preconstruction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants", and 45CSR29-"Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

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The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia Air Pollution
Control Commission
1558 Washington Street, East
Charleston, West Virginia
5:14,21(2t)

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
REBECCA MASON WHITE
RT. 2
HEDGESVILLE, WV 25427
My Commission Expires June 23, 1999

Rebecca Mason White

Certificate of Publication

This is to certify the annexed advertisement

WV DEPT. COMMERCE, LABOR & ENVIRNMENTAL RESOURCES

NOTICE OF PUBLIC HEARING

appeared for 2 consecutive days weeks in The Journal Publishing Company a newspaper published in the City of Martinsburg, W. Va., in its issue beginning

5/14

and ending

5/21

The Journal

Fee $ 34.27

I, as an officer of the News-Tribune, a daily newspaper published at Keyser, Mineral County, West Virginia, hereby certify that the WV Air Pollution Control Comm. in the case of Public Hearing: Permits for construction and modification

vs.

a copy whereof is hereto annexed has been published for 2 consecutive weeks in said NEWS-TRIBUNE, the first publication being on the 13th day of, May 19 92.

Given under my hand at Keyser this 20th day of May, 19 92.

Robert P. Fluck
Publisher

Publisher's Fee
$ 31.23

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992, beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound EmissionS and Oxides of Nitrogen EmissionS".

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Copies of the proposed legislative rule are available for public review in the Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

If you have any questions or comments please contact:
G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311
5:13,20

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 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", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

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Copies of the proposed legislative rule are available for public review in the Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

May 14,21 N

MARCIA MOORE

being first duly sworn, says that the

notice of public hearing-- June 23rd

hereto attached was printed in the Parkersburg News a daily newspaper published in the City of Parkersburg, Wood County, West Virginia, and posted at the front door of the Court House for two successive weeks, the first publication ~~and posting~~ thereon being on the 14th day of MAY 19 92, and subsequent publication on the 21st day of MAY 19 92, the ..... day of ..... 19 ....., the ..... day of ..... 19 ....., the ..... day of ..... 19 ....., and the ..... day of ..... 19 .....

Printer's Fee $ 33.80

3 " x 103= 309 words @ 10.9375

Marcia Moore

Subscribed and sworn to before me this 21st day of MAY 19 92.

S. T. Smith

Notary Public for Wood County, West Virginia

My commission expires March 20, 2001

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
S.T. SMITH
1900 West Virginia Avenue
Parkersburg, West Virginia 26104-1726
My Commission Expires March 20, 2001

Parkersburg Printing Co. - 5/71

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 m., the West Virginia Air Pollution Control ommission will hold a public hearing on proposed gislative rules 45CSR 14-"Permits for Construction d Major Modification of Major Stationary Sources f Air Pollution for the Prevention of Significant eterioration", 45CSR19-"Requirements for Pre-nstruction Review, Determination of Emission eading Proposed New or Modified Stationary ources of Air Pollutants and Emission Trading for rasource Pollutants", and 45CSR29-"Regulation quiring the Submission of Emission Statements r Volatile Organic Compound Emissions and ides of Nitrogen Emissions".

Upon authorization and promulgation, these gislative rules will be submitted to the U.S. vironmental Protection Agency for incorporation o the West Virginia Implementation Plan under federal Clean Air Act.

The hearing willbe held in the Commission's nference Room at 1558 Washington Street East, arleston, West Virginia. The hearing is open to the blic. Written and oral testimony by all interested ties will be accepted and made part of the record. Copies fo the proposed legislative rule are ilable for public review in the office of the WV Air ution Control Commission, Northern Panhandle ional Regional Office, 1911 Warwood Avenue, eeling, WV.

f you have any questions or comments please tact:

G. Dale Farley
Secretary
West Virginia
Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

May 14, 21
-Reg., May 14, 21

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Bonnie Mattern *for the publisher of the* ~~WHEELING NEWS-REGISTER~~ *WHEELING INTELLIGENCER newspapers published in the CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:*

May 14,21, 1992

commencing on the 14 *day of* May, *19* 92

Given under my hand this 26 *day of* May, *19* 92

Bonnie Mattern

Sworn to and subscribed before me this 26th *day of* May *19* 92 *at WHEELING, OHIO COUNTY, WEST VIRGINIA*

Linda E. Miller
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires August 9, 1992

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRIGNIA
LINDA E. MILLER
67 E. Frazier Avenue
Wheeling, West Virginia 26003
My Commission Expires August 9, 1992

State of West Virginia, County of Upshur, ss:

....Douglas M. Leifheit.....Advertising Manager
Record Delta, a newspaper published at Buckhannon in the said county, do hereby certify that the annexed.....
Notice Of Public Hearing
.....
.....
was published once a week for ..(2)..two..... successive weeks in said Record Delta newspaper published as aforesaid, commencing on the.....
13th and 20th days of May..... days of 19..92.....

Given under my hand this ..27th day of May day of 19..92.....
....Douglas M. Leifheit....Advertising Manager

15.14
Printers fee $.....

WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 29th day of May ~~day~~ of 1992.....
.....Notary Public.

My Commission expires ..LINDA SNYDER.. 29..1999.....

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LINDA SNYDER
P. O. Box 1108
Buckhannon, WV 26201
My Commission Expires March 29, 1999

NOTICE OF PUBLIC HEARING

On Tuesday, June 23, 1992 beginning at 9:00 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on proposed legislative rules 45CSR14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration", 45CSR19 - "Requirements for Pre-construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intra-source Pollutants", and 45CSR29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions".

Upon authorization and promulgation, these legislative rules will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record.

Copies of the proposed legislative rule are available for public review in the Gassaway Public Library, 100 Birch Street, Gassaway, WV.

If you have any questions or comments please contact:

G. Dale Farley
Secretary
West Virginia Air Pollution Control Commission
1558 Washington St., East
Charleston, WV 25311
(5-13,20)

COMMISSION MEETING

PLEASE JUNE 23, 1992 PRINT

NAME	ADDRESS	COMPANY AFFILIATION
C. Beard	Ohio	
W Edwearingen	Koppers Industries 436 Seventh Ave Pgh PA	KOPPERS
Walt Stewart	Parkersburg	DuPont
Phil Snyder	"	GE Plastics
Ty Scandrett	5088 W. Washington St.	EEI-Midwest Inc
Jeannine Hammer	Allegheny Power Greensburg	
CLAUDIA BANNER	P.O. BOX 2021 ROANOKE, VA	APCO
chuck Hewett	Ohio Power Canton	OPCo
Karen Price	Coal Manufacturers Assn	Chas. WV.
Missy Woolverton	WVCAG.	Charleston
John Cummings	Robinson & McElwee	Charleston
Ron Smith	Dupont - Belle	DuPont
J Hallman	Caldwell McCormick	Inc

COMMISSION MEETING

JUNE 23, 1992

PLEASE PRINT

NAME	ADDRESS	COMPANY AFFILIATION
Pamela Nixon	406 Grandview Pt., Dunbar	People Concerned About MIC
Bob Foster	Chas.	Chas Ryan Assoc

Comments

COMMISSION MEETING

JUNE 23, 1992

NAME	ADDRESS	COMPANY AFFILIATION
Karen Price	405 Capitol St. Chas.	WV. Manufacturers Assn.

WEST VIRGINIA
MANUFACTURERS ASSOCIATION

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION

ON

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 REGULATION 19

JUNE 23, 1992

My name is Karen Price, President of the West Virginia Manufacturers Association. The Association appreciates the opportunity to review and comment on the Air Pollution Control Commission's changes to Regulation No. 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". In keeping with WVMA's supportive position regarding the development of West Virginia's air pollution control program, we are submitting written comments to you today. I would like to take a few moments, however, to express our major concerns with the proposed changes.

The definition of "actual emissions" has been revised to allow the Director to presume that source specific allowable emissions for a unit are equivalent to actual emissions. There are no qualifications or criteria under which the Director would choose to use actual emissions as the measure of allowable emissions. Use of actual emissions for establishing permit limitations could place manufacturing entities in West Virginia at a competitive disadvantage vis-a-vis manufacturing entities in other states because permit modifications would be required each time their product mix was changed in such a way as to cause even a nominal increase in actual emissions. Permits should be written to anticipate a reasonable "cushion" between actual and allowable emissions. The federal Clean Air Act amendments does not require that allowable emissions be set at actual emission levels.

It is unclear to the WVMA what the changes in the definitions for "Major Modification" and "Major Stationary Source" is intended to accomplish since they depend upon the emissions of "any regulated pollutant". Would emissions of hazardous air pollutants, regulated under Title III of the Clean Air Act be included in the definition of "regulated pollutant"? We would suggest a definition for "regulated pollutant" be included stating that the term applies only to pollutants for which the Commission has promulgated emissions limitations.

As proposed, the regulatory requirements that are applicable to stationary sources of VOC also apply to major sources of nitrogen oxides except where a determination has been made that the net air quality benefits are greater in the absence of the NO_X reductions from the sources concerned. The Clean Air Act states that NO_X reductions are not required in those areas where it is determined that reductions in NO_X "would not contribute to attainment". The WVMA suggests the proposed provision be revised to reflect the federal language.

The proposed language eliminates the provision to exempt sources of temporary insignificant emissions upon determining they would not interfere with further progress toward attainment. Thus, temporary sources such as pilot plants, portable facilities and emissions resulting from construction phase of new sources could not be exempted. This is an important issue with many manufacturers in West Virginia as their business depends upon the rapid development of new technologies and products in responding to ever changing market conditions, without the need for permit modifications where it is demonstrated that the emissions are temporary.

For the same reasons stated earlier, the WVMA believes "allowable emissions" should be established as the baseline for determining credit for Emission Offsets, not "actual emissions".

Further, we are concerned about the proposed limitation which denies sources credit for emission reductions to those that occur on or after the design year for the most current attainment demonstration. Such limitations are not imposed by the Clean Air Act.

As proposed the regulation does not require the Director to notify a permit applicant of any additional information needed to complete a permit application. It only requires the Director to determine if an applications deficiency exists. A permit review and issuance could be delayed several weeks or months.

This concludes my remarks and I again want to thank the Commission for the opportunity to present the Association's concerns and comments on the proposed changes to Regulation No. 19. More detailed information on these comments are included in the written document that I am submitting today.

WEST VIRGINIA
MANUFACTURERS ASSOCIATION

SUITE 503
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

June 23, 1992

Mr. G. Dale Farley
Director
Air Pollution Control Commission
1558 Washington Street, East
Charleston, West Virginia 25311

Dear Director Farley:

Enclosed are the written comments of the West Virginia Manufacturers Association ("WVMA") regarding proposed Series 19 (Requirements for Preconstruction Review, Offsets and Emission Trading) filed May 3, 1992.

The Association is concerned about the adverse impact on manufacturers in West Virginia with the proposed use of "actual" emissions as a measure of "allowable" emissions for establishing permit limitations, and the baseline for determining credit for Emission Offsets. Such actions would place West Virginia manufacturing entities at a disadvantage with those in other states, as well as place a heavy work load on the APCC permitting section for permit modifications for minor or nominal increases in emission rates. We are also particularly concerned about the differences between the federal and proposed state definitions for "major modification".

The Association encourages the Commission to adopt the federal language regarding this regulation to prevent errors and maintain consistency.

The WVMA appreciates the opportunity to offer these comments to the Commission, and trusts, as always, that the Commission will give these comments due and deliberate consideration. Please contact me at your convenience if you wish to discuss any of these comments.

Sincerely,

R. L. Foster

R. L. Foster, Chairman
Environmental, Safety & Health Committee

RLF:cmc
Enclosure

WEST VIRGINIA
MANUFACTURERS ASSOCIATION

SUITE 503
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION TO THE PROPOSED REGULATION OF THE WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION 45 C.S.R. 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

June 23, 1992

Prepared By:

Environmental, Safety & Health Committee
West Virginia Manufacturers Association

and

John C. Cummings

Robinson & McElwee
600 United Center
Post Office Box 1791
Charleston, West Virginia 25326
(304) 344-5800

Counsel for
West Virginia Manufacturers Association

June 15, 1992

COMMENTS OF THE WEST VIRGINIA MANUFACTURERS ASSOCIATION TO THE PROPOSED REGULATION OF THE WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION 45 C.S.R. 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

June 23, 1992

I. INTRODUCTION

On May 8, 1992, the West Virginia Air Pollution Control Commission ("APCC" or "Commission") filed with the Secretary of State a proposed rule, 45 C.S.R. Series 19, covering pre-construction review, determination of emission offsets, and emission trading of intrasource pollutants for new or modified stationary sources in West Virginia. Accompanying the proposed rule was a notice requesting both written and oral comment. Pursuant to this notice, the WVMA has undertaken a review of the proposed rule, and files these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout West Virginia. In keeping with the WVMA's supportive position regarding the development of West Virginia's air pollution control program, the WVMA offers these comments as a means to facilitate the development of a reasonable and protective program, consistent with the requirements of Title I of the Clean Air Act Amendments of 1990, for pre-construction review, determination of emission offsets, and emission trading.

II. COMMENTS

1. Section 2.1 - Definition of "Actual Emissions."

The definition of the term "actual emissions" has been revised to state at Section 2.1.b that "The Director may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit." There is no qualification or explanation of the situations under which the Director would choose to use actual emissions as the measure of allowable emissions. If actual emissions are used as the measure of allowable emissions for the purposes of setting permit limitations for sources, manufacturing entities within the state would be placed at a serious competitive disadvantage vis-a-vis manufacturing entities located in other states, since manufacturers located in West Virginia would be forced to apply for a permit modification each time their product mix was changed in such a way as to cause even a nominal increase in actual emissions. Permits should generally be written to anticipate a reasonable "cushion" between actual emissions and allowable emissions, so that manufacturing entities have a reasonable margin for increasing actual emissions due to changes in their product mix without being subject to the delays inherant in applying for permit modifications. Without this flexibility, manufacturers located in West Virginia would be unable to respond to changing market conditions on a timely basis. This is especially true given that the West Virginia Air Pollution Control Act was amended by the 1992 Legislature to allow the Director's office six months to process applications for permits and permit modifications (12 months for "major" sources and modifications).

Title I of the Clean Air Act Amendments of 1990 does not in any way require that allowable emission levels be set at actual emission levels. By measuring allowable emissions

in terms of actual emissions, the APCC would greatly increase the already significant burden the agency will face in processing applications for operating permits as required under Title V of the Clean Air Act Amendments of 1990. The addition of Section 2.1.b would merely have the inevitable effect of diverting the Commission's resources away from more worthwhile projects and initiatives. For these reasons, the WVMA requests that Section 2.1.b be deleted in its entirety.

2. Sections 2.2.0 and 2.2.1 - Definitions of "Major Modification" and "Major Stationary Source".

Previously, the term "major modification" was defined as any change in a major stationary source which would result in a significant net emissions increase in "any pollutant subject to regulation by the Commission." Similarly, the term "major stationary source" was defined as any stationary source with the potential to emit 100 tons per year or more of "any pollutant subject to regulation by the Commission." The proposed rule changes the quoted language to state that the regulatory definitions of "major modification" and "major stationary source" depend upon emissions of "any regulated pollutant."

It is not clear to the WVMA what this change in the regulatory language is intended to accomplish. Even if assumed that the change is intended to bring within the gambit of Series 19 any pollutant regulated by EPA but not subject to regulation by the Commission, it is not clear whether hazardous air pollutants regulated under Title III of the Clean Air Act Amendments of 1990 would be deemed "regulated pollutants" for purposes of Series 19. Due to the lack of a definition of "regulated pollutant," the scope of this term is not clear. To remedy this situation, the WVMA requests that a definition of "regulated pollutant" be added to Series 19 stating that the term applies only to pollutants for which the Commission has

promulgated emissions limitations. Alternatively, the WVMA requests that the Commission adopt a definition of "regulated pollutants" along the lines of the definition found in Series 14 of the Commission's regulations, under which the term is defined as follows:

> "Regulated Pollutant" means any pollutant regulated by the Clean Air Act or the West Virginia Air Pollution Control Act and the regulations promulgated thereunder, and the following pollutants:
>
> - Carbon Monoxide
> - Nitrogen Oxides
> - Particulate Matter
> - PM_{10}
> - Sulphur Dioxide
> - Ozone (Volatile Organic Compounds)
> - Lead
> - Asbestos
> - Beryllium
> - Mercury
> - Vinyl Chloride
> - Fluorides
> - Sulfuric Acid Mist
> - Hydrogen Sulphide (H_2S)
> - Total Reduced Sulphur Compounds (including H_2S)
> - Reduced Sulphur Compounds (including H_2S)

3. Section 2.40 - Compounds Excluded From the Definition of "VOC".

Under the proposed rule, Section 2.40 has been added indicating that certain delineated compounds are excluded from the definition of the term "volatile organic compound" unless subject to an emission standard under Clean Air Act Section 111. In order to ensure that the list of compounds found in Section 2.40 remains current with the compounds which EPA excludes from the definition of VOC, the WVMA requests that a sentence be added at the end of Section 2.40 stating that "In addition, the Director may exclude any other compound which has been excluded by U.S. EPA."

4. Section 3.2.b - Determinations That VOC Requirements Do Not Apply to NO_x Emissions.

Section 3.2.b, as added in the proposed rule, states that "the requirements of this regulation applicable for major stationary sources of VOC also apply to major stationary sources of NO_x except in the case of those sources of NO_x for which a determination has been made to the satisfaction of the Commission and U.S. EPA that the net air quality benefits are greater in the absence of NO_x reductions from the sources concerned." Under Clean Air Act §182(b)(1)(A)(i), NO_x reductions are not required in those areas for which EPA determines that "additional reductions of oxides of nitrogen would not contribute to attainment." Thus, the proposed language of Section 3.2.b is unduly burdensome, in that it applies VOC requirements to NO_x unless demonstrated that air quality would improve in the absence of NO_x reductions, as opposed to a demonstration that additional NO_x reductions would not contribute to attainment of ozone standards. In addition, the proposed language requires a source-specific determination that net air quality benefits would be greater in the absence of NO_x reductions, while the Clean Air Act requires only that an area-wide determination be made that NO_x reductions would not contribute to nonattainment. In order to make Section 3.2.b consistent with the requirements of Clean Air Act §182, the WVMA requests that this provision be revised to state that "the requirements of this regulation applicable to major stationary sources of VOC also apply to major stationary sources of NO_x, except in the cases of stationary sources of NO_x located in areas where U.S. EPA and the Commission have determined that additional reductions in oxides of nitrogen would not contribute to attainment."

5. Section 3.4: Exemption for Sources of Temporary Emissions.

Under the proposed rule, the APCC has deleted the provision allowing the Commission to exempt sources of temporary emissions upon determination that such temporary sources will not significantly interfere with reasonable further progress toward attainment. In order for manufacturing entities located in West Virginia to remain competitive with manufacturers located in other states, it is important that a provision be included to allow for the exemption of temporary sources such as pilot plants, portable facilities, and emissions resulting from the construction phase of new sources. This exemption facilitates manufacturers located in West Virginia in developing new technologies and responding to changing market conditions without the need for permit modifications where it is demonstrated that the emissions are temporary and will not interfere with reasonable further progress towards attainment. Furthermore, the existing exemption is protective of the environment in that it ensures that LAER applies to all such sources located in or having a significant impact on non-attainment areas with respect to the specific pollutant for which the area has been designated as non-attainment. The WVMA thus requests that the Commission retain the authority to grant exemptions for sources of temporary emissions by adding the existing language of Section 3.4 to the proposed rule. In connection with this change, the WVMA requests that the Commission retain the existing definition of the term "resource recovery facility" as presently found in Section 2 of Series 19, and also retain the provision presently found in Section 6.1.a.1 which grants the Commission authority to exempt resource recovery facilities.

6. Section 4.1.c - Determination of LAER for Phased Construction Projects.

The proposed rule adds Section 4.1.c, which requires that LAER be reviewed and modified "at the latest reasonable time which occurs no later than 18 months prior to commencement of each independent phase" of a phased construction project. This provision also requires the owner or operator of such source to demonstrate the adequacy of the LAER determination for each phase of the project. The WVMA objects to this provision on the basis that it is unnecessarily burdensome to require that the LAER determination be made for each phase of a phased construction project. This provision would make it extremely difficult for regulated entities to plan and budget for phased construction projects. The WVMA requests that Section 4.1.c be revised to provide that LAER may be determined at the beginning of the project for each subsequent phase.

7. Section 7.1.a - Baseline For Determining Credit For Emission Offsets.

Section 7.1.a has been revised to state that the lower of actual or allowable emissions is to be used in determining the baseline for credits for emission offsets. As stated above in Comment No. 1, there are legitimate and compelling reasons for permit conditions to set allowable emissions at levels above actual emissions. This flexibility is needed for manufacturing entities within West Virginia to remain competitive with manufacturers located in other states by responding to changes in market demand in a timely fashion. The proposed revision to Section 7.1.a represents an additional attempt to eliminate this flexibility.

Allowable emissions are the measure by which the baseline for determining credits for enforceable emission reduction offsets are properly measured. To eliminate the distinction between allowable emissions and actual emissions is to destroy any incentive for stationary

sources to operate below allowable emissions. In the long run, the emission increases resulting from this disincentive to operate below allowable emissions would outweigh any reductions achieved by short-changing stationary sources through the lowering of the baseline for purposes of determining credits for emission offsets. In the interest of both fairness and the expedient achievement of the ambient air quality standards, the WVMA requests that Section 7.1.a be revised to state that the baseline for determining credit for emission offsets is allowable emissions.

8. Section 7.5.a - Credit for Reductions From Shutdown.

Section 7.5.a states that emission reductions from shutdowns or curtailment of production or operating hours below baseline levels must occur on or after the design year of the most current attainment demonstration in order to creditable. This limitation is not imposed by the Clean Air Act, and will have the effect of arbitrarily denying sources credit for emission reductions. The WVMA thus objects to this provision and requests that the second sentence of Section 7.5.a be deleted in its entirety.

In addition, Section 7.5.a indicates that in order for a source to be credited with emission reductions from shutdowns or permanent curtailment of production or operating hours below baseline levels, the reductions must be federally enforceable and enforceable by the Commission. Section 7.5.a does not indicate the mechanism by which such reductions would be made federally enforceable. Presumably, for emissions reductions from shutdowns to be enforceable, the Commission intends that the owner or operator of the source would have to enter into a consent order with the Commission. If this is the mechanism by which such emission reductions would become enforceable, the WVMA requests that this be stated or otherwise clarified.

9. Section 8.2.c - Exemption for Emissions Having No Effect on Nonattainment Area.

The proposed rule deletes Section 8.2.c, which presently grants the Commission authority to exempt from the requirements of Series 19 VOC sources which demonstrate that emissions from the proposed source will have virtually no effect upon any nonattainment area. This provision is a narrowly tailored exemption designed 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." The WVMA requests that the exemption of Section 8.2.c be included in the proposed rule so that the Commission can retain its authority to invoke the limited exclusion contained therein where appropriate.

10. Section 9.1.a - 180-Day Grace Period For Replacement Sources.

Section 9.1.a of the proposed rule has been revised to eliminate the provision granting the Director authority to allow up to 180 days for shakedown of replacement stationary sources before the existing source is required to cease operation. As drafted, the proposed rule requires offsets to be accomplished prior to start-up of the replacement source. This change represents a significant burden on manufacturing entities, as manufacturers would be forced to lose production during the shake-down phase of a replacement source in order to use the emission credits from the shutdown of the old source. This would act as a disincentive for manufacturers to replace and upgrade their West Virginia facilities. Existing sources can be expected to respond to this change in one of the following ways: (1) Entities will continue to use existing sources which are less efficient than the planned replacement sources; or (2) The replacement facilities will be located in other states. To avoid these negative results, the WVMA requests

that Section 9.1.a be revised to include the 180-day grace period for the shakedown phase for replacement sources.

11. Section 12.4 - Determination of Whether Application is Complete.

Section 12.4 of the proposed rule grants the Director 30 days from receipt of a permit application to determine whether the application is complete. In the event the application is deemed to be incomplete, the date of receipt of the application is deemed to be the date upon which the Director receives all required information. However, this section does not specifically state that the Director is required to notify the applicant of what information must be provided to complete the application. Section 12.4 merely states that the Director must determine if any deficiency exists. The net effect is that the Director could delay the running of the 12-month period for processing a permit application by repeatedly determining that additional information is needed to complete the application. To remedy this situation, the WVMA requests that Section 12.4 be revised to state as follows:

> 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. If the application is determined to be incomplete, the Director shall notify the applicant in writing of all deficiencies and information needed to complete the application. Upon receipt of the requested information by the Director, the application shall be deemed complete for purposes of Section 12.5 If the Director subsequently determines that additional information is needed to evaluate or take final action on the application, the Director may request such information in writing and set a reasonable deadline for a response. However, the subsequent request for additional information shall not effect the calculation of the 12-month period for reviewing the application provided under Section 12.5.

12. Section 15.4 - Sources Which Become Subject to Series 19 Due to Relaxation of Emission Limitations.

Section 15.4 indicates that any person who owns or operates a stationary source which becomes a major source due to the relaxation of an enforceable limitation on capacity or hours of operation shall become subject to the requirements of Series 19 as though construction had not yet commenced on the source or modification. It is not clear from the language of proposed Section 15.4 what effect the underlined language is supposed to have on such stationary sources. The WVMA requests that Section 15.4 be revised to indicate that stationary sources which become subject to Series 19 due to relaxation of limitations on capacity or hours of operation will be granted a reasonable time frame (e.g., 180 days) within which to arrange for the necessary emission reduction credits while maintaining normal operations.

III. CONCLUSION

The WVMA expresses its appreciation to the Commission for this opportunity to offer our input on the proposed revisions to Series 19 of the Commission's regulations. If you wish, we would welcome the opportunity to discuss these comments at your convenience. Please contact Robert L. Foster at 342-0161 with any questions or comments.

Respectfully submitted this 23rd day of June, 1992.

WEST VIRGINIA MANUFACTURERS ASSOCIATION

Robinson & McElwee
600 United Center
Post Office Box 1791
Charleston, West Virginia 25326

92 JUN 23 AM 10:45

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

JUN 22 1992

Mr. G. Dale Farley, Director
West Virginia Air Pollution Control Commission
Department of Commerce, Labor & Environmental Resources
1558 Washington Street, East
Charleston, West Virginia 25311

Dear Mr. Farley:

EPA has reviewed the West Virginia regulations pertaining to nonattainment new source review and prevention of significant deterioration which are the subject of the public hearing to be held on June 23, 1992 and are being proposed for inclusion into the West Virginia State Implementation Plan (SIP). In general, EPA supports the new regulations and commends West Virginia in its efforts to meet the statutory SIP submittal deadline of November 15, 1992. We do, however, have the following comments. Please include these comments as part of the public hearing record.

45 CSR 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"

1. §45-19-2. 2.35, Definition of Building, Structure, Facility or Installation. The reference to the Standard Industrial Classification Manual should be updated to the 1987 version. The Government Printing Office number for the 1987 version is GPO 1987 0-185-718: QL 3.

2. §45-19-6. 6.1.c., pertaining to the list of sources which must include fugitive emissions from the calculation of potential emissions. Since §45-19-10 requires that all sources include fugitive emissions in the application of this regulation, this section appears to be superfluous. However, to be consistent, 6.1.c. should also include §112 pollutants (hazardous air pollutants) since the 1990 CAAA only allow the exclusion of §112 pollutants from PSD regulations (§112(b)(6)).

3. §45-19-7. 7.6, pertaining to the replacement of one hydrocarbon with another based on reactivity. Although this language originates in 40 CFR Part 51 Appendix S, this language is now obsolete. The 1990 Clean Air Act Amendments (CAAA) do not address reactivity of volatile organic

compounds (VOCs). Title III of the CAAA addresses the toxicity of certain compounds and requires consideration of the relative toxicity of the compounds involved in the proposed new source or the modification. This section should also require that any emission increases and reductions be made consistent with §112 of the 1990 Clean Air Act Amendments.

4. §45-19-9. 9.1.a., pertaining to emission offsets. The requirement to obtain sufficient emission offsets should be stated as follows: "The emission offsets committed to must be obtained by the applicant's proposed start-up date...".

5. §45-9-9. 9.1.b., pertaining to external offsets. This section requires that emission reductions obtained outside West Virginia be made enforceable through a State Implementation Plan (SIP) revision. This section must also require that emission reductions obtained from another source outside the facility and not controlled by the applicant also be made enforceable through a SIP revision. We suggest the following language change: "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 and not controlled by the applicant, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision so as to be federally enforceable and enforceable by the neighboring State and the Commission and at all participating sources."

6. §45-19-18. 18.1, pertaining to other applicable emission standards. There is a reference in this section to 45 CSR 27. Since this reference is unfamiliar and was not provided with this public hearing package, EPA is not able to comment on the appropriateness of this reference. Generally, emission trades (or bubbles) cannot alter New Source Performance Standards (NSPS), any Section 112 requirements (pertaining to hazardous air pollutants), any major new source or major modification requirements (pertaining to BACT and LAER).

7. §45-19-18. 18.4, pertaining to meeting the Emissions Trading Policy Statement of December 4, 1986. Since this West Virginia regulation discussing emissions trading is not specific enough to be considered a generic emissions trading regulation, any emissions trades must also be specifically required to be approved and made federally enforceable through a SIP revision. The appropriate language requiring SIP submittal of emission trades must be added.

45 CSR 14 - Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

1. §45-14-2. 2.8, Definition of Building, Structure, Facility or Installation. The reference to the Standard Industrial Classification Manual should be updated to the 1987 version. The Government Printing Office number for the 1987 version is GPO 1987 0-185-718: QL 3.

2. §45-14-2. 2.25, Definition of Significant. This definition should also include municipal waste organics, metals and acid gases at the levels indicated below. We suggest the following language.

	Emission Rate
Municipal waste organics (measured as total tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} TPY
Municipal waste combustor metals (measured as particulate matter)	15 TPY
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	40 TPY

3. §45-14-9. 9.2, Air Quality Modeling. The reference to "the Administrator of the United States Environmental Protection Agency" should be changed to "the United States Environmental Protection Agency."

Thank you for the opportunity to comment on the West Virginia new source regulations pertaining to attainment and nonattainment areas. If you have any questions about these comments, please feel free to contact Cynthia H. Stahl at (215) 597-9337.

Sincerely,

David L. Arnold, Chief
Program Planning Section

cc: David Porter, WV APCC

West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

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WVAPCC staff response to 6-23-92 comments by WVMA on 45 CSR 19.

Comment 1 (section 2.1)

The WVMA comment reflects a misunderstanding of the intent of the definition. This section does not define "allowable", it defines "actual". It does not mean that the Chief may substitute actual emissions as the measure of allowable emissions, it means the reverse. If actual emissions cannot be determined, then the Chief may use the allowable emissions instead. Note - this language is also in 45 CSR 14. The apparent original intent was to also provide for air quality analyses using allowable emissions for those facilities permitted but not constructed.

Comment 2 (sections 2.20 and 2.21)

The federal language at 40 CFR 165(a)(1)(iv)(A)(1) and 40 CFR 165(a)(1)(v)(A) refers to "any pollutant subject to regulation under the Act". OAQ staff agrees that a definition of "regulated pollutant" is needed. However, since this a non-attainment regulation, the only pollutants that make any sense in such a list are the pollutants for which Ambient Air Quality Standards exist or pollutants which are regulated as precursors to the formation of pollutants having ambient air quality standards. A short definition will be inserted as 2.30, instead of the WVMA's proposed list. Sections 2.30-2.44 will be renumbered.

Comment 3 (section 2.40)

OAQ staff agrees that a catch-all should be added to the list of VOC exclusions to allow the Commission to exclude compounds later determined to be photochemically non-reactive.

Comment 4 (section 3.2.b)

The WVMA has referenced language from CAA 182(b)(1)(A)(i), which indicates that NOx reductions are not required in areas where EPA determines such reductions "would not contribute to attainment". A more careful reading of the CAA reveals that this section deals with the 15% reduction required to show Reasonable Further Progress. At CAA 182(f)(1), the language matches what is proposed in 45 CSR 19. However, an even more careful reading reveals that CAA 182(f)(1)(A) contains similar language to that referenced by the WVMA.

The language was changed to read "... that no net air quality benefit will occur as a result of NOx reductions ...".

Comment 5 (section 3.4)

The deleted section referred both to resource recovery facilities and temporary sources. USEPA has stated in their comments that they could not approve a SIP revision which contained the exemption for resource facilities, because they agreed as part of a lawsuit settlement to remove it from federal regulations.

In USEPA's comments on this section, they said that there was "no provision for exemptions for temporary sources in 40 CFR Part 51.165 or in Appendix S". Such an exemption, however, can be found in Appendix S at section IV.B.

The exemption for temporary sources will be restored until such time as EPA regulations are changed, but not for resource recovery facilities.

Comment 6 (section 4.1.c)

OAQ staff disagrees with the WVMA's position on phased construction projects. This requirement is not unreasonable, and gives the permittee an 18-month "cushion" during which time the agency could not revise the LAER determination. Without this "cushion", the agency could conceivably require a revised LAER determination up to the date of construction commencement for the plant. Also, this language closely matches 45 CSR 14.7.4. If BACT analyses are revisited in this way, LAER analyses should be updated.

The language will be changed to "... commencement of construction ...", but no other changes appear to be appropriate

Comment 7 (section 7.1.a)

USEPA's comments stated that the baseline "... must be the lower of actual or allowable emissions, not just the allowable emissions as proposed by West Virginia".

Comment 8 (section 7.5.a)

USEPA's comments stated that "this section needs to be modified to require that in no event will shutdowns which occurred prior to the design year of the attainment demonstration be creditable".

OAQ staff agrees that the language should be changed to indicate the mechanism by which the reductions will be made enforceable, but no other changes are deemed appropriate.

Comment 9 (section 8.2.c)

Actually, the reference is section 8.2.d.C.(c). USEPA's comments stated that "the State may not exempt any applicable source from NSR". Also, it would be extremely difficult to qualitatively or quantitatively determine that a source of VOC had "virtually no effect" on an ozone nonattainment area.

Comment 10 (section 9.1.a)

USEPA stated in their comments that the 180 day shutdown allowance "must be removed" for federal approval of the rule.

Comment 11 (section 12.4)

This section was modeled after 45 CSR 14.6.4. However, after reviewing the parallel federal language at 40 CFR 51.166(q)(1), it appears that a sentence was inadvertently omitted from 45 CSR 14 and 19. The appropriate federal language has been inserted, instead of the WVMA's proposed language but substantially accomplishing the WVMA's apparent objectives.

Comment 12 (section 15.4)

This language was copied verbatim from 45 CSR 14.18.4, and is almost identical to federal language at 40 CFR 51.165(a)(5)(ii). NOTE: Since applicability of the rule including LAER requirements would become immediate upon permit relaxation, the WVMA's suggestion of a 180 day grace period to find offsets is not deemed to be approvable by EPA nor appropriate within the state regulation. The permittee would have to secure and achieve the offsetting emission reductions prior to state approval of the permit relaxation even if the original permit was not deemed to be a "sham" permit by EPA or the state. No changes will be made, except those proposed by Commission Counsel Larry Kopelman.

After further review of the issue raised in WVMA's Comment 9 on Regulation 14 proposed revisions concerning public hearings versus public meetings, all references to public hearings in Sections 13 and 14 has been changed to public meetings.

West Virginia Department of
Commerce, Labor & Environmental Resources
Air Pollution Control Commission

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Office of Air Quality
Staff Response to Commission Meeting
of August 5, 1992
45CSR19

1. The Commissioners, in light of the Governor's Executive Order 8-92, requested that the title of this rule be changed to reflect the present realties of organizational structure.

The title of the rule changed from "Air Pollution Control Commission" to "Division of Environmental Protection as Promulgated by West Virginia Air Pollution Control Commission".

2. The Commissioners, in light of the Governor's Executive Order 8-92, concurred with the attached "Staff Response to the Governor's Executive Order 8-92" and requested that proper changes be made.

Changes were made to nomenclature to reflect the position of the referenced "Response".

3. The Commission requested that the language of subsection 9.1.a be retained to reflect the current Federal rules.

Language regarding a 180 day shakedown period was added back in as per current Federal rules.

4. The Commission requested that the language in subsection 7.6 be deleted to reflect the current usage of "volatile organic compounds" (VOCs) instead of hydrocarbons.

Subsection 7.6 was deleted.

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Air Pollution Control Commission

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WVAPCC Staff Response to the Governor's Executive Order 8-92 (Effective July 1, 1992)

As a result of the Governor's Executive Order 8-92, questions have arisen as to the proper nomenclature for administrative functions. As of the effective date of the Executive Order (July 1, 1992):

> "the name of the Division or the Director (of DEP), as may be appropriate, shall be deemed substituted for the name of the predecessor office or official in the Code; in any legal instrument or proceeding, including but not limited to existing agency rules, regulations or guidelines . . ." (Executive Order 8-92, Section 7(b)).

Revisions to rules and rules not in existence which are promulgated after the effective date of the Executive Order need to use current terminology.

Therefore, definitions of "Chief of Air Quality", "Division of Environmental Protection", and "Director" have been added or changed to reflect the status of operations since the implementation of the Executive Order.

In addition, in all areas where the term "Director" was previously used the term "Chief" or "Chief of Air Quality" is currently used. The term "Chief" or "Chief of Air Quality" has also been substituted for the term "Commission" in those areas which are not part of the Commission's appellate or rule-making authority.

File
Reg 14/19
Rules

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

RECEIVED
92 APR 20 PM 2:19
WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

APR 14 1992

Mr. Dale Farley, Director
West Virginia Air Pollution Control Commission
Department of Commerce, Labor & Environmental
Resources
1558 Washington Street, East
Charleston, West Virginia 25311

Dear Mr. Farley: Dale

Thank you for your hand-delivered (floppy disk) March 23, 1992 draft of proposed new source review regulations pertaining to nonattainment areas. As you go through our comments, keep in mind that we are using 40 CFR Part 51.160, 40 CFR Part 51.165, and 40 CFR Part 51 Appendix S as well as the 1990 Clean Air Act Amendments (CAAA) as references. Although you provided a copy of the PSD regulations for our review, we understand that the PSD regulations will not be a subject of the public hearing which West Virginia would like to hold in early May 1992. Therefore, in the interest of providing you comments on the nonattainment NSR regulations which will be subject to the May public hearing, we have not reviewed the PSD regulations. With regard to the nonattainment new source review regulations, although Appendix S is used as a guide, many sections of it are obsolete now and are superseded by the 1990 CAAA.

Our comments are contained in the following enclosure. Where possible, we have tried to be prescriptive in the recommended language. In most cases, we have indicated where the needed language can be found and copied. We hope these comments are helpful. As you may already know, there are many complexities associated with the NSR requirements that still need to be worked out. Some of these complexities relate to interpretations of the statute and continue to be discussed at

EPA. Region III is committed to helping West Virginia identify and resolve issues as quickly as possible. We would be happy to review another draft of these regulations containing the changes suggested in the enclosure. If you wish to discuss these issues further, please feel free to contact me at (215) 597-4713 or have your staff contact Cynthia Stahl at (215) 597-9337.

Sincerely,

Marcia L. Spink, Chief
Air Programs Branch

Enclosure

cc: Dave Porter, WV APCC

COMMENTS ON THE MARCH 23, 1992 DRAFT

WEST VIRGINIA NSR REGULATIONS

PERTAINING TO OZONE, CO, AND PM10

45 CSR 19

1. The numbering system of the regulations needs to be straightened out since the original regulations are numbered 1.01, 2.01, etc. but the changes are being made to 1.1, 2.1, etc. We will use the original numbering. If West Virginia is also recodifying its regulations, this should be submitted as a separate SIP revision to EPA.

2. Section 1.01. The provision to allow for bubbles should be deleted. This provision is not prescriptive enough to meet the requirements of the December 4, 1986 Emissions Trading Policy Statement (51 FR 43814) for generic bubbles. In addition, generic bubbles are not a required component of a State's new source regulations. If West Virginia is interested in developing a generic bubble regulation, we would be happy to discuss this with you separately from the changes being made to the PSD/NSR regulations.

3. Section 2.06. The change made to this section to reference 40 CFR Part 81, Subpart B should be changed to reference 40 CFR Part 81, instead. The reference to Subpart B is incorrect as it is Subpart C but there is no need to be more specific than to reference 40 CFR Part 81. The term "air quality control region" is no longer used by EPA to identify area designations. It is the Section 107 nonattainment designation of an area (as codified in 40 CFR Part 81) that determines whether PSD or nonattainment NSR would apply. Since nonattainment area is defined elsewhere in this regulation, the reference to 40 CFR Part 81 could be made in that definition and the definition of air quality control region could be deleted.

4. Section 2.17, Definition of Intrapollutant Emission Offsets. The term, VOC, rather than hydrocarbon should be used in the examples. We also suggest adding another example which would prohibit offsets between VOC and NOx sources (even though both are ozone precursors).

5. Section 2.20, Definition of Major Modification. The Act allows the exclusion of clean coal technology projects from this definition. See Section 415 of the Act. If West Virginia is interested in this exemption and its conditions, EPA can provide some suggested language.

6. Section 2.21, Definition of Major Stationary Source. The definition for PM10 should include not just PM10 but also PM10 precursors.

7. Section 2.24, Definition of Net emissions increase. Under (b)(B), the language should be modified as follows: "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."

8. Section 2.25, Definition of nonattainment area. The reference to Section 107 should be updated by deleting the reference to paragraph (d) of this Section.

9. Section 2.29, Definition of Reasonable Further Progress. This definition should be modified to reflect the CAAA requirement for RFP. We suggest the following language: "RFP means the annual reductions in emission of pollutants in nonattainment areas as are required by Part D of the 1990 CAAA or may reasonably be required by EPA for the purpose of ensuring attainment of the National Ambient Air Quality Standards (NAAQS) by the applicable statutory deadline."

10. Section 2.30, Definition of Resource Recovery Facility. This definition can be deleted since the exemption for these kinds of sources is no longer permitted.

11. Section 2.31, Definition of Secondary Emissions. Before the last sentence of this proposed definition, the following sentence should be added: "Secondary emissions also include hoteling emissions from marine vessels while at dockside." The last sentence should be modified as follows: "...from any mobile source, which is regulated under Title II of the 1990 CAAA."

12. Section 2.32, Definition of Significant. The significance level for VOC and NOx sources should be included here for the whole range of ozone nonattainment areas. The 40 TPY significance level is applicable for VOC and NOx sources located in marginal and moderate ozone nonattainment areas. In serious and severe ozone nonattainment areas, the de minimis levels are 25 tons of VOC or NOx determined over 5 years. See Section 182(c)(6) of the 1990 Clean Air Act Amendments. In extreme ozone nonattainment areas, the de minimis level is zero, i.e. any increase in emissions is considered significant. We suggest modifying Table 45-19A as follows:

Table 45-19A - Significance levels

Carbon monoxide	100 tons per year (TPY)

Nitrogen oxides	40 TPY
Sulfur dioxide	40 TPY
Particulate matter	25 TPY
PM10	15 TPY
Ozone, marginal and moderate nonattainment areas	40 TPY VOC or NOx
Ozone, serious and severe nonattainment areas	25 tons VOC or NOx determined over a consecutive 5 year period
Ozone, extreme nonattainment areas	Zero
Lead	0.6 TPY

13. Section 2.34. Is the term "source" being deleted?

14. Section 2.36. What is the term being defined here?--Air pollution or statutory air pollution?

15. Section 2.37, Definition of Building, Structure, Facility or Installation. The activities of marine vessels needs to be included in this definition. This definition should be modified as follows: "...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 th 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 rom (within 25 miles of) an OCS source) are considered direct emissions of the OCS source (pollutant-emitting activity)....(as proposed)...."

    The Standard Industrial Classification Manual was updated in 1987. Therefore, the updated reference should be used instead.

16. Section 2.39 and 2.40, Definitions of Major modification of ozone and Major stationary source for ozone. All these definitions should include the statutory requirement to regulate NOx for ozone pollution.

17. Section 2.43, Definition of VOC. There has been an update

in the list of exempt VOC compounds. The March 18, 1991 Federal Register describes these in more detail (56 FR 11418). Five specific compounds are added and four classes of perfluorocarbons are added to the list of exempt compounds.

18. Section 3.01. The first sentence should be modified as follows: "This regulation 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."

19. We suggest adding two sections under Section 3.02. The first of these sections should read: "The requirements of this regulation applicable for major sources of PM10 shall also apply to major stationary sources of PM10 precursors, except where EPA determines that such sources do not contribute significantly to PM10 levels which exceed the standard in the area.

    The second section should read: "The requirements of this regulation applicable for major stationary sources of VOC shall also apply to major stationary sources of NOx, except in the case of those sources of NOx for which EPA has determined that the net air quality benefits are greater in the absence of NOx from the sources concerned."

20. Section 3.04. These exemptions should be deleted. There is no provision for exemptions for temporary sources in 40 CFR Part 51.165 or in Appendix S. The exemption for resource recovery facilities must also be deleted. Although this exemption is still contained in 40 CFR Part 51, Appendix S, EPA could not approve a SIP regulation which contains this exemption. EPA agreed, as part of a lawsuit settlement, to remove this exemption.

21. Section 4.01(a) C. The requirements for emission offsets (for sources locating in nonattainment areas) at the minimum ratios specified by the statute should be placed in this section. Although West Virginia is proposing to add the minimum offset ratios in the definition of offsets (under 2.26), the regulation itself needs to impose the offset requirement. A general statement requiring "more than equivalent emission offsets" is sufficient for those sources locating in attainment areas that may have impacts on nonattainment areas. Such a statement, however, is not sufficient for those sources locating in nonattainment areas.

22. Section 4.01(a) D. An additional sentence should be added after the first sentence in this section: "Atmospheric

simulation modeling for ozone impacts is not necessary for VOC and NOx." The last sentence should be modified to reference all paragraphs in 8.2: "...Paragraphs 8.2 a. through d. of this regulation..."

23. Section 4.01(b) should be deleted and in its place, the following language on phased construction projects should be inserted. "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."

    An additional Section c. should be added which either references 40 CFR Part 51.160 through 51.164 regarding public participation requirements or copies the necessary public participation requirements.

24. Section 6.01(a) A. As stated earlier, the exemption for resource recovery facilities must be removed.

    The list of source categories which must include fugitive emissions in the calculation of potential emissions must also include the following: 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 CAAA, 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. In addition, since this is a regulation for nonattainment areas, we also suggest that you include as part of the list of sources required to include fugitive emissions in the calculation of potential emissions, the CTG source categories not already listed and expand the catch-all at the end of this list to include any source category required to be regulated under Section 110 of the Act. The CTG sources are required to include fugitive emissions in their calculation of potential emissions for existing source RACT regulations. Therefore, they should also be required to do the same to determine new source applicability.

In addition, West Virginia may grant an exemption from emission offsets for emissions from rocket engine and motor firing. See Section 173 (e) of the Act. There is also an exemption for stripper wells in the Act. See Section 819. If West Virginia is interested in these exemptions and their conditions, EPA can provide some suggested language.

25. Section 7.01. This section is confusing and appears to contradict the definition of net emissions increase under Section 2.24. Since this section is referenced in Section 7.02 pertaining to sources which have no applicable regulation, Section 7.01 appears to be a paraphrase of 40 CFR Part 51 Appendix S, Section IV. (C) 1. The baseline for determining credit for emission offsets for the source providing the emission credits for the new or major modified source must be the lower of actual or allowable emissions, not just the allowable emissions as proposed by West Virginia. This section should be re-worked using Appendix S language as guidance. The new Section 7.01 a. could be modified as follows: "For the existing source providing the emission offsets, the baseline emission rate will be the SIP emissions limitation in effect at the time the application to construct or modify a major stationary source is filed." All references to the regulation should say "SIP regulation".

26. Section 7.04. This section appears to be a paraphrase of 40 CFR Part 51 Appendix S, Section IV. (C) 2. It does not, however, relay the full meaning of that section. For example, the issue relating to the use of alternative fuels pertains to sources which want emission credit based on the use of cleaner fuels. In these cases, the State would need to ensure that the permit contains conditions which require the source to obtain the equivalent emission reductions if it should switch back to the dirtier fuel later on. West Virginia should copy the language in Appendix S.

27. Section 7.05. This section describes the criteria by which a potential source shutdown will be creditable. This section needs to be modified to require that in no event will shutdowns which occurred prior to the design year of the attainment demonstration will be creditable. The language in subparagraph (c) regarding the shutdowns occurring prior to the date of application is obsolete language and should be deleted. Section 7.05 a. could be modified as follows: "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, and federally enforceable. In addition, such reductions are creditable if they occurred on

or after the design year of the most current attainment demonstration."

Section 7.05 c. can be deleted entirely but if not deleted should be modified by deleting the first sentence and begin as follows: "Where an applicant can establish that it shut down or curtailed...(as proposed)... offset emission from the proposed source."

28. Section 7.06. This section pertains to emission offsets when the VOCs are toxic compounds. West Virginia should use the language in Section 112 of the Act regarding the availability of emission offsets when toxic compounds are involved.

29. Sections 8.01 and 8.02. In addition to requiring that the offsets be located as close to the proposed source as possible, West Virginia must also require that the offsets be obtained in the same nonattainment area. In the case of ozone, offsets may be obtained in another nonattainment area of equal or greater classification if it can be shown that the emissions from the proposed source impact the other nonattainment area.

The language in Section 8.02 a. A. should also use the term "Section 107 designated nonattainment area" rather than Air Quality Control Region. An additional sentence should be added to the end of this section as follows: "For VOC and NOx sources, offsets may be obtained in another area of equal or greater nonattainment classification if the proposed source's ambient air quality impact on this other area can be shown."

Section 8.02 b. should say that the Commission <u>may</u> increase the ratio of the required offsets, rather than <u>should</u>.

Under Section 8.02 d. C., NOx sources should be added in. The 1990 CAAA require that VOC and NOx sources be regulated for ozone unless a waiver for NOx controls is obtained from the Administrator.

Section 8.02 d. C.(c) should be deleted. The State may not exempt any applicable source from NSR.

30. Section 9.01. The allowance, in subparagraph (a), of up to 180 days for an existing source, which would be shutting down to provide emission offsets, to continue operation even as the new source begins operation must be removed. The fact that the new source would be a replacement for the existing source about to shutdown is not of consequence. If an existing source will be generating emission offsets for the new source, these offsets must be obtained prior to the

new source beginning actual operation. This section should be modified as follows: "The emission offsets committed to must be obtained by the applicant's proposed start-up date."

Under subparagraph (b), the requirement that offsets from out of State sources be required to be approved as a SIP revision should also be extended to offsets from sources not owned by the applicant. In addition, however, there must also be a requirement that emission offsets for VOC and NOx sources must be obtained in the same ozone nonattainment area or an area of equal or greater classification if the proposed source is shown to have an impact on the other area. Alternatively, Section 8.02 regarding the location of emission offsets can be referenced.

31. Section 12, Bubble concept for intrasource pollutants. This section should be deleted. As mentioned above, the requirements here are not specific enough to meet the requirements of the December 4, 1986 ETPS regarding generic bubble rules. Since new sources are not permitted to bubble their emissions (per the ETPS), this section is superfluous and must be deleted.

32. Section 13 regarding discretionary decisions made by the Director, should be deleted. If there are new source review issues being disputed, the source can appeal the permit conditions but the final decision cannot rest solely with the Commission if the issues relate to the federally enforceable permit conditions.

West Virginia Department of
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Air Pollution Control Commission

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WVAPCC staff response to 6-22-92 comments by USEPA on 45 CSR 19.

Comment 1 (section 2.35)

The reference to the SIC Manual will be revised as suggested.

Comment 2 (section 6.1.c)

The reference at 6.1.c to sources which must include fugitives will be deleted.

Comment 3 (section 7.6)

USEPA suggests that this section should be made consistent with section 112 of the CAA Amendments, and that the language is obsolete. Until such time as USEPA provides either an NSR regulation to use as a guide, or suggests specific language, staff sees no reason to change this section.

Comment 4 (section 9.1.a)

OAQ staff disagrees with USEPA's suggestion to change "accomplished" to "obtained". "Obtained" could be construed to mean that the offset had merely been agreed upon, and had not yet been actually "accomplished".

Comment 5 (section 9.1.b)

OAQ staff believes that the situation envisioned by USEPA has already been covered in 9.2. However, the additional language proposed by USEPA may clarify the regulation. Therefore, the EPA-proposed language has been added.

Comment 6 (section 18.1)

45 CSR 27 is the Air Toxics Regulation.

Comment 7 (section 18.4)

OAQ staff agrees to add language in reference to a SIP revision at Section 18.3.

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
Cabinet Secretary

JMR:cjb
B:RUL-APC4.CJB

WEST VIRGINIA DEPARTMENT OF
COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
AIR POLLUTION CONTROL COMMISSION

IN RE: Public Hearing on Proposed Amendments (Revisions) to Regulation 14 - "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration."

Public Hearing on Proposed Amendments (Revisions) to Regulation 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."

Public Hearing on Proposed Regulation 29 - "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions."

TRANSCRIPT OF PROCEEDINGS had and/or testimony adduced in the hearing held before the West Virginia Air Pollution Control Commission in the Conference Room at 1558 Washington Street, East, Charleston, Kanawha County, West Virginia, on the 23rd day of June, 1992, commencing at 9:17 a.m.

APPEARANCES: L. NEWTON THOMAS, Jr., Chairman
CREDE DOUGLASS, Vice Chairman
JEAN C. NEELY, Commissioner
DR. WILLIAM WALLACE
SAMUEL KUSIC, Commissioner
DALE FARLEY, Director
LARRY KOPELMAN, Special Assistant A.G.

DONNA KAY MILLER
Certified Court Reporter
7724 Sissonville Drive
Sissonville, West Virginia 25320
(304) 988-9581

I N D E X

P R O C E E D I N G S

(9:17 A.M.)

CHAIRMAN THOMAS: Let's call the Air Pollution Control Commission to order. We will convene a hearing to consider proposed amendments to Regulations. At this time let the record indicate that a quorum of the Commission are present with the attendance of Commissioner Crede Douglass, Jean Neely, Sam Kusic, William Wallace, and L. Newton Thomas, Jr.

We have a Court Reporter whose name I did not get. Donna Miller will be transcribing the proceedings of this hearing, and anyone wishing a copy will contact her directly at the conclusion of the hearing.

The first subject before the hearing is the proposed amendments to Regulation 14, Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution For the Prevention of Significant Deterioration.

There was a hearing on Reg 14 back in September of 1991. However, that proposed amended regulation was withdrawn, and some additions and

modifications have been made to it and it will be considered now at this hearing for comment.

Mr. Farley, do you want to introduce that?

MR. FARLEY: As you noted, the Reg 14 was revised or amended with a notice about the middle of last year, July 15, I believe, for hearing. The primary focus of the amendments made at that point last year was to incorporate the nitrogen oxides increments that EPA has established in its rule making and make some other minor changes which we will talk about when we visit that.

In making general comments here about the NSR in general -- new source review programs in general, Regs 14 and 19 somewhat hang together in the sense that they both deal with nonattainment or a major source permitting either nonattainment areas or areas believed to be attaining standards.

If you really look at what is driving the timing of really Reg 19 changes in the hearing today, the Clean Air Act Amendments of 1990 basically mandate that the state update its nonattainment major source review regs on schedules of June 30, 1992. So we won't make that

date anyway really if you have PM_{10} nonattainment areas as it relates to PM_{10}, and by November 15, 1992 for ooze and other pollutants.

EPA pretty much cites the November date in relation to what they think our obligation is because they seem to be a little more focused on the ozone issues, but in reviewing -- I will have a Staff Engineer here to try to go over some of the changes when we get into 19, but in reviewing 19 and trying to do an update to that, that sort of flags some changes that were perhaps needed to 14 just to have conforming types of language changes, minor changes to Reg 14.

Also -- and this may be the principal change we are making to 14 and a change we are also incorporating into 19 when we get to that hearing -- we are putting new sections into these regs to establish a new permit track, I think in the length of time lines, public participation procedures to a certain extent which ensue from the changes to Air Pollution Control Law in the last legislative session.

As you have probably heard at some of the meetings we have had along the way, the PSD program and

the major source permitting activities in general does not lend itself in any cases at all to meeting the old 90-day time lines we have for issuance of permits under the old Code sections. That is something we have talked about a number of times.

The Code has now been amended to provide for up to a year review of major projects, of major sources, and we have revised both Regs 19 and 14 to incorporate that kind of time line in the process.

I think we have also in 14 and 19 in lieu of referencing public meetings, or meeting, in relation to public participation on permits -- we have now made that hearings.

I think with those general comments I can now, if you would like, turn that discussion over as far as the specific changes or the nature of the changes to 14 to Dave Porter of the Staff, and he can sort of answer any questions you have about this.

MR. PORTER: My name is Dave Porter. I am a Staff Engineer with the APCC, and if you would prefer, I will just go over changes to Reg 14, what is different from last year, not to revisit what you have

already approved last year.

CHAIRMAN THOMAS: That is fine.

MR. PORTER: In changing Regs 14 and 19 we sent a draft to the EPA and we got some comments back from them, and some of the changes you see are in response to their comments.

On Page 4 of Reg 14, Section 2.8, they commented that we needed to address the Outer Continental Shelf sources in our new PSD regulations. So I took their suggested language and put it in the regulation as they told me to.

The next change is at Section 2.16. They requested that we make all references to Section 107 subsections -- just refer back to Section 107 and not refer to the subsections.

COMMISSIONER NEELY: Excuse me, where are you now?

MR. PORTER: I am on 2.16 (a) on Page 6.

COMMISSIONER NEELY: Thank you.

MR. PORTER: 2.20 on Page 7, that was in response also to an EPA comment about hoteling emissions from marine vessels while at dockside and some changes to

the language about secondary emissions from what we had last year. I took their suggested language once again and inserted it in the regulation.

COMMISSIONER NEELY: Do we have a description or a definition of what you are talking about?

MR. PORTER: The way it was described to me by Cynthia Stall from EPA Region 3 was that it was emissions from vessels while they were tied up at the dock as opposed to in transit.

COMMISSIONER NEELY: What are they going to emit? Would they have a diesel engine going or something, or is it electricity? Is that what you are talking about?

MR. PORTER: The first time I ever heard the expression was when I got their comment.

MR. FARLEY: If I might interject, that was sort of laughable. We were just going to pass over it and leave it out originally and EPA made the comment and we said -- I think we finally said well, let's leave it in there if for no other reason than it might give somebody a gleaning as to how you make the distinction between secondary emission and primary emission for other similar

types, like barge unloading or something, but other than that it is a pretty absurd, I think, insertion.

COMMISSIONER NEELY: This is any marine vessel, I think. It can be a barge or a tug.

MR. PORTER: In Section 2.42 on Page 11 I added six compounds to the list of compounds that are not VOCs, and on that list I just discovered yesterday I left out three I should have put on that list as well. This came from the EPA comment letter once again.

In 6.1 on Page 13 I changed the language from obtaining a permit to obtaining a permit prior to commencement of construction, modification, or relocation. That was to clarify the point that you had to get a permit before you actually commenced.

In 6.2 we removed the reference to the 90-day permit review period and added a line to the end of 6.3 on Page 14. Instead of "in accordance with applicable rules and regulations of the Commission" we also added "the permit application, and any permit issued pursuant to this regulation."

In Section 6.5 we replaced the 90 days with 12 months per the Code change.

COMMISSIONER NEELY: What is the status of a plant or something that is in the process of getting a permit change, permits for this 12-month period? Is it operating or not operating?

MR. FARLEY: This is only construction. We are giving construction modification permits. So this would be a pre-construction, pre-modification permit.

COMMISSIONER NEELY: But there is no operation at all during that period?

MR. FARLEY: Right. There is nothing that can legally be done in terms of commencement of construction prior to issuance of the permit.

CHAIRMAN THOMAS: Why do you need 12 months?

MR. FARLEY: We don't in all instances. What we have found from the experience we have had with the PSD program, primarily back in the '87, '88, early '89 period when we had applications -- we had a number of them at the time -- is that once you get an application that is in good shape -- in other words, it is complete and will stand up -- you can probably get through the process in something like six months.

If you had an extremely involved application of construction work, a major chemical manufacturing facility or something like that, I doubt that you could get it in six months, but mostly what we have seen up to this point have been two generation facilities, and it pretty much takes six months.

I think the fastest track we ever put one of these on, we did that sort of to our detriment because we just didn't have things where documents are concerned--five months, and part of that is because of the process you go through. We are obligated to do a complete evaluation, write a report of preliminary findings, publish a notice of intent to approve and allow 30 days to comment.

CHAIRMAN THOMAS: Does all that take place in the 12-month period?

MR. FARLEY: Yes. All that would take place right now supposedly in the 90-day period, but this can't happen.

CHAIRMAN THOMAS: The way I read that, it was an add on to the 12-months, but I guess not.

MR. FARLEY: No. The review process as

we would envision it would be actually issue the permit. We would quickly review the application, go through the public participation process and issue the permit within 12 months.

As I said, from experience we know with good applications it is very hard sometimes to get them all together, but once they are complete you can do them if you have -- you can commit the Staff person really to get through that without a lot of interferences or a lot of other work load -- you can probably get through those in about six months.

One thing I might comment on in relation to something I might bring up later, Virginia did a workload analysis for its PSD, permitting work -- because they have had quite a lot of applications and a lot of turmoil in some of their applications there. I think they have rejected -- if I recall their workload analysis, that a PSD review takes a full complete man year of effort.

COMMISSIONER NEELY: It takes a what?

MR. FARLEY: A complete man year of effort.

COMMISSIONER NEELY: Well, particularly

if it is very complicated, you might have to have more than the absolutely required public hearings, which means another 30 days, so on an so forth.

CHAIRMAN THOMAS: Okay.

COMMISSIONER NEELY: I am glad to see you have taken the sexist language out of this.

MR. PORTER: We did that last year.

The bottom half of 6.5, we eliminated that paragraph because it refers to the 90-day time period.

MR. FARLEY: There is also no longer a default on the major permit -- major sources. There was not a default point.

MR. PORTER: In Section 6.7 we changed maintenance of monitoring stations to operation and maintenance of monitoring stations.

The next change is at 9.1 at the bottom of Page 15. We just revised the reference to the model guidelines. The same change in 9.2.

In Section 15.3 (d), that is on Page 21 --

COMMISSIONER NEELY: On Page 18 you have

wiped out (b). Is that a previous --

MR. PORTER: That is a change.

COMMISSIONER NEELY: That is a previous change? Is that because we haven't any Class I areas?

MR. PORTER: No. That is because of a change in language in the federal regulation. If you will look just down below that, there is an added (e) that refers to Class I areas.

COMMISSIONER NEELY: Is that Class I areas anyplace or Class I areas just in the state?

MR. FARLEY: That would be anyplace, but as far as what we have jurisdiction over we would have the direct responsibility for --

COMMISSIONER NEELY: Well, let's say you had a Class I area right over in the Shenandoah National Park, for example, and you had a power plant or something that was infecting the air quality, which you do, and that was not able to maintain its Class I, who steps in in a situation like that? I mean, you will have two EPA sections.

MR. FARLEY: Well, I don't know if there is any legal problems with doing that since it is not our

air and it is not West Virginia, but the processes --

COMMISSIONER NEELY: It is not your air, but it is your pollution.

MR. FARLEY: Right, but the process would still -- as we understand, the process would be just like it was a Class I area in the state as far as who would step in and make comments, the Federal Land Manager or the National --

COMMISSIONER NEELY: The National Park Service?

MR. FARLEY: The National Park Service would have the ability to advise -- that is basically their role -- the main authority, which is the agency here, on what they thought would be the gross impact, if any, on the Class I area. If we concurred with them, I believe that our rule would say our responsibility would be to it.

COMMISSIONER NEELY: Not just us, of course, Virginia.

MR. PORTER: In Section 15.3 on Page 21 we added 21 additional source categories to the list of categories that must include fugitives in the permit in

response to the EPA comments.

We removed the reference to 112 of the Clean Air Act since NSHAP specifically removed it from the PSD, the federal rules and added a reference to Section 110, once again under EPA comment.

In 16.2 on Page 23 we put in some language about confidentiality. It did just say "excluding confidential business data." We went into a little more detail as to what we were talking about as to information entitled to protection as confidential information under the Code.

In 16.3 we added more detail on the public hearings as far as written comments and notification of the opportunity for written public comment, the opportunity for hearing, et cetera.

COMMISSIONER NEELY: Where you have a copy of the application at various places down here in 16.4, is that where you are going to send all the copies, or is that just the advertisement?

Where is going to be copies of the permit application? Is that a different --

MR. PORTER: That is in 16.2.

COMMISSIONER NEELY: Okay, one location of the proposed source. Where is that going to be? For instance, are you going to specify anything or are you just --

MR. FARLEY: Just to tell you how we do it now, when we have a PSD application, what we try to do is we go to notice of intent and issue or send out copies of the ad and graph permits and all that sort of thing -- is we try to find a public library in the area of the facility typically. Sometimes it is one of our offices if they are very close by, if it is in Wheeling or Fairmont.

COMMISSIONER NEELY: A library is better because a library has after-business hour hours.

MR. FARLEY: Right. Typically it has been a library, a public library.

MR. PORTER: In 16.5 we added language specifying that written public comments had to be received within 15 days after any public hearing.

COMMISSIONER NEELY: That doesn't make sense, does it? Does that sentence make sense?

MR. FARLEY: What is that?

COMMISSIONER NEELY: "Comments submitted

within a specified period not to exceed 15 days after any public hearing to receive comment on" -- oh, I see. That is a very complicated sentence.

MR. PORTER: In 17.2 we added language to allow the Director's designee to preside over hearings instead of the Director, and in 19.1 on Page 25 we changed the language to "in the event of a redesignation" instead of the Commission makes a redesignation, because now EPA can make redesignations on their own.

Sections 20 and 21 are the two sections that should have been in the regulations. We added the section of conflict with other rules and severability.

Larry Kopelman had suggested changes that we haven't incorporated into the draft of the regulation that you have so far. You have got two-pages saying "Suggested Changes to 45CSR14" that has got some highlights.

COMMISSIONER NEELY: This?

MR. PORTER: Yes.

COMMISSIONER NEELY: Two pages or two paragraphs?

MR. FARLEY: It is just two provisions

there on 14.

MR. PORTER: Yes. He found a typo, and he added the language in Section 20.1 that essentially says that even though Regulation 13 doesn't apply to these major sources the $1,000 base fee still applies.

The language in Regulation 22 specifically says that is a $1,000 base fee for a Regulation 13 source.

COMMISSIONER NEELY: I have got a question for you.

MR. PORTER: Okay.

COMMISSIONER NEELY: All through this thing we talk about the Director. What is the Director after the first of July?

MR. KOPELMAN: I read the final draft of the Executive Order this morning, and the Governor has appointed a Chief of Air Quality as the Director as it appears in all the Commission's regs and in the Code.

COMMISSIONER NEELY: What page are you on?

MS. KOPELMAN: Page 4 at the bottom, Section 4 (b).

COMMISSIONER NEELY: The Chief of Air Quality --

MR. KOPELMAN: Yes.

COMMISSIONER NEELY: -- shall exercise -- is that what you are talking about -- is authorized to appoint?

MR. KOPELMAN: I think you are up in (a). It is (b).

COMMISSIONER NEELY: Are transferred to the Chief of Air Quality?

MR. KOPELMAN: Right. If you go on over to (c), it also says that all offices and functions of the Commission shall be exercised under the general supervision of the Chief of Air Quality.

The way I read those two together is whatever the Director does now, either pursuant to the Code or any regulations thereunder, those functions will be performed by the Chief of Air Quality.

COMMISSIONER NEELY: That is not what that says in (a) though. It says the Director and I assume that is what they are talking about, is the Director of the department or division or whatever it is,

whatever DEP is.

MR. KOPELMAN: Well, let's go back and read (a) then. What does (a) say?

COMMISSIONER NEELY: The Director is authorized to appoint the incumbent Director of the Air Pollution Control Commission to occupy said office --

MR. KOPELMAN: That would be the office of --

COMMISSIONER NEELY: But you have got so many directors here you don't know what you are talking about.

DR. WALLACE: That would refer back to the section on Page 2.

COMMISSIONER NEELY: But that means the Director is the DEP. So you have got so many directors, Larry, I think that it is going to create a considerable confusion. When you are sitting here looking at 45CSR14 you think the director is a director. Who is the director?

MR. PORTER: There is a definition of the director in 45 --

MR. KOPELMAN: I think to someone who

does not deal with the new DEP on a daily basis, I think you are right. There is going to be confusion.

COMMISSIONER NEELY: Why can't we call him the Chief of the Air Division or something?

CHAIRMAN THOMAS: He is.

MR. KOPELMAN: Chief of Air Quality.

COMMISSIONER NEELY: That is what I am saying. Don't you think it ought to say that in this?

DR. WALLACE: In all the regs?

CHAIRMAN THOMAS: Well, you are going to have to --

MR. DOUGLASS: We will have to go back from day one.

COMMISSIONER NEELY: Maybe what we ought to do is to have a definition -- you are the lawyer. Shouldn't we have under general or something a definition where it says major stationary source -- we also say the director?

MR. KOPELMAN: I think once the dust settles that the Commission should probably go back and do a lot of cleanup to regulations to make them more consistent with the way things will be in the future,

meaning to change the title Director in every reg to Chief of Air Quality. I don't think you should start here today.

COMMISSIONER NEELY: Well, I disagree. I think that there ought to be a statement in there saying the Director in terms of this insofar as this regulation is concerned is construed to mean the Chief of the Air Division or something like that.

We are on a cusp right now. We are just about ready to tilt over into a new system. The more clarification you offer people, I think the better. It sounds like you are empowering the man who is the political appointee with the power to grant these permits.

CHAIRMAN THOMAS: You are.

COMMISSIONER NEELY: I don't think we should be. I hope this is not a political interest point.

CHAIRMAN THOMAS: The Legislature did that.

DR. WALLACE: By giving the authority to the new agency. The other thing is this is an executive order and not Code. I think it sort of follows the Code but theoretically an executive order can change with the

next executive order.

COMMISSIONER NEELY: But they shouldn't conflict. I mean, the language is confusing.

DR. WALLACE: Your rules have a longer life. Is that what you are referring to?

MR. KOPELMAN: That is correct, yes.

CHAIRMAN THOMAS: Couldn't continuity provision 6 (b) cover that?

COMMISSIONER NEELY: What page are we on?

CHAIRMAN THOMAS: 4.6(b). That is kind of hard to read, but I am sure that that will be the --

MR. KOPELMAN: Section 7.

COMMISSIONER NEELY: Section 7?

CHAIRMAN THOMAS: It is Section 6 under mine. Section 6 is titled continuity.

COMMISSIONER NEELY: Is your's six?

MR. KOPELMAN: Mine is entitled Section 7.

CHAIRMAN THOMAS: I haven't got the new one then.

COMMISSIONER NEELY: Continuity is seven.

MR. KOPELMAN: I think so.

CHAIRMAN THOMAS: What is that?

MR. KOPELMAN: I agree with Ms. Neely that it will be confusing until people deal with the new procedures, but once it is explained to those who deal with the regulations that wherever a regulation says Director it means Chief of Air Quality -- once that is explained, I don't think there will be a problem.

COMMISSIONER NEELY: But you are fighting with the definitions in Section 1 of the Executive Order; that is all. So it seems to me that for the purpose of clarification we ought to put our own definition in this rule until this thing is -- right now it is the Director. I don't think anybody has any problem, but on the first of July it is not the Director.

MR. KOPELMAN: I was just going to give you an example of the IRS Code, the definition of home. Home is the place you intend to return to when you leave home.

COMMISSIONER NEELY: Are we going to have an encore?

MR. KOPELMAN: No.

COMMISSIONER NEELY: Well, I think it is

unnecessarily confusing, and I don't see any -- is there any problem with putting it in the definition under this 45CSR14? Is there a problem with that?

MR. KOPELMAN: It would be cleaner if you eliminated the -- see, you are defining Director for purposes of this regulation in the regulation, and it would probably be cleaner to change Director to Chief of Air Quality if that is --

COMMISSIONER NEELY: I am thinking of the workload, I guess. To go through the whole thing and change everything to Chief of Air Quality is a big job.

MR. KOPELMAN: It really isn't. The computer can do that virtually instantaneously. So that is not a big job.

COMMISSIONER NEELY: I was thinking of the days of the quill pen.

MR. KOPELMAN: You can just call it up and say change that Director to Chief of Air Quality. So that is not a big job. Don't worry about the --

DR. WALLACE: You can do it with one statement.

COMMISSIONER NEELY: That is what I am

saying. The definition would take care of it in one statement. Then you wouldn't have to change the whole thing, and then you can wait until the dust settled, as it were.

CHAIRMAN THOMAS: But that is only to this regulation. All the other regulations referring to the Director will have the same problem.

COMMISSIONER NEELY: We are going to be working on more of them.

CHAIRMAN THOMAS: But not all of them.

DR. WALLACE: I think what you are suggesting is do them all at once with some kind of qualifier that wherever it appears in the rules and regulations of the former (indicating) is now --

COMMISSIONER NEELY: Chief of Air -- whatever you are going to be.

DR. WALLACE: Right. It is an ominous kind of thing. I suspect that that is possible, but I am not positive of that.

COMMISSIONER NEELY: Can you do that in these rule making things?

MR. KOPELMAN: Yes.

DR. WALLACE: They do it in the Code when they change the Code.

COMMISSIONER NEELY: You have a rule for the rule making. I mean, change the rules for all of the different --

MR. KOPELMAN: I think so.

DR. WALLACE: You can change a law in an organization -- within a law I think they say all aforementioned references to the department now or the division or whatever --

COMMISSIONER NEELY: Yes, will now be substituted.

MR. KOPELMAN: Yes. Dale has got the right idea. Why don't we talk this over with John Ranson and the new Director, Mr. Callahan, and report back to you?

COMMISSIONER NEELY: See, there you go, the Director.

CHAIRMAN THOMAS: Yes.

MR. KOPELMAN: And we will find out what is appropriate.

CHAIRMAN THOMAS: Okay.

DR. WALLACE: And by that using the Director of the DEP here.

COMMISSIONER NEELY: They were just talking about the Director.

DR. WALLACE: I know.

CHAIRMAN THOMAS: Okay, if we can pass that for now. He is the current Director until June 30. Review that and see how we can best address that problem in the regulations.

Do you want to go ahead?

MR. PORTER: Yes. I have a letter from the EPA that we got about 3:30 on the fax machine yesterday where they had some additional comments to this latest draft on Regulation 14.

MR. FARLEY: The Commission has a copy of that up there.

COMMISSIONER NEELY: That is 19, isn't it?

MR. PORTER: That is the June 22 letter.

COMMISSIONER NEELY: It is at the end of it?

MR. PORTER: Yes. It is on Page 3 and 4

of that letter. The only really substantial comment they had was in the definition of significant. They wanted us to add three pollutants to the significance table in Section 2.25, municipal waste organics, municipal waste combustor metals, and municipal waste combustor acid gases. Those are currently not on the list, and they want us to add them.

The other two comments were pretty minor changes.

CHAIRMAN THOMAS: Is that it?

MR. PORTER: Yes.

CHAIRMAN THOMAS: Any questions for Mr. Porter?

COMMISSIONER NEELY: We are going to add these, aren't we?

CHAIRMAN THOMAS: Are you proposing that we do that?

COMMISSIONER NEELY: You haven't got them in there, but you --

MR. PORTER: Right. We just got this late yesterday.

COMMISSIONER NEELY: You have no problem

with that?

MR. PORTER: I have no problem with those changes.

CHAIRMAN THOMAS: So this proposed language is going to be added to the regulation.

Any more questions? Does anyone from the audience?

MS. PRICE: Good morning. My name is Karen Price, and I am President of the West Virginia Manufacturers Association.

CHAIRMAN THOMAS: You want to swear her in?

(Witness sworn.)

THEREUPON,

K A R E N P R I C E

being first duly sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

MS. PRICE: The Association appreciates the opportunity to review and comment on the Air Pollution Control Commission's proposed Regulation 14, and we are submitting our comments in writing. However, I would like

to take a short time this morning to express our concern with the proposal.

Changes to the regulation should reflect only those necessary to comply with the requirements of the federal Clean Air Act. For example:

The definition of "major modification" restricts the types of changes at a facility that are not considered major modifications. It does not consider an alternative fuel or raw material, an increase in hours of operation or an increase in production rate unless the change is prohibited by a federal permit issued pursuant to regulations of the Commission. Thus, any of these changes could be considered as a major modification if it was prohibited by an order of the Commission.

The definition of the word "significant" is important since PSD review is required for pollutants which will exceed emission rates set forth in the definition. Some of the pollutants, such as asbestos, beryllium, mercury, vinyl chloride and lead, should be removed from the list as they are regulated under Section 112 of the federal Clean Air Act.

The Commission has proposed source

categories that must include fugitive emissions in calculations of potential to emit. The list includes sources which are not included in the federal rule, thereby making the state rule more stringent than the federal rule, which is prohibited without demonstrated justification.

The WVMA is concerned about the one-year period allowed by the Director to review and issue PSD permits. With the Air Pollution Control Commission permitting section being fully funded and staffed by the operating permit fees required by the Clean Air Act amendments, we believe that six months should be adequate to issue such permits.

More detailed information is included in the written comments that we submitted for your consideration. I would like to thank the Commission for the opportunity to appear in regard to Regulation 14. Thank you.

CHAIRMAN THOMAS: Any questions for Ms. Price?

COMMISSIONER NEELY: Can we have a small recess while I sort out some of these papers? I mean, I

can't even figure out what we have got here.

CHAIRMAN THOMAS: Thank you, Karen. I guess they are going to question you later.

(Witness stands aside.)

MR. FARLEY: Let me explain, if I could, one thing in relation to Karen's comments. One way we developed these rules and added various language to them -- and this is a little awkward and maybe something we do have to go back and look at -- is EPA should have already issued NSR rules, remand of the federal rules. They have got a draft. They have got, I guess, something out for review now.

We have had a lot of interaction with EPA about what should be in the state rules, since we have to sort of almost jump ahead of them because of the way we meet our own statutory commitments, at least as far as Reg 19 goes. So we have accepted a lot of their comments as things that would -- in relation to have our rule up to date.

With respect to the comment about adding the source categories for which you have to include fugitives, this is something that will be in the federal

rule. Whether we have a problem with that or we have to drop back and drop some of that out until EPA caught up sort of with what they are telling us ought to be in the rules, that is something we will have to look at, but we have had -- we are in a very awkward situation on a lot of things now because the EPA is way behind schedule even though we have statutory deadlines.

COMMISSIONER NEELY: What about the statute itself? Are these in the statute?

MR. FARLEY: I don't think so. I don't think that detail -- when you start talking about naming all the various source categories for which there is NSPS standards or something like that that now get added because EPA thinks there is ability to quantify those.

The underlying federal rules may be there in some instances and maybe all instances with these additions already, but as far as having that translated over into the NSR regulations, I think it won't be there yet in the federal rules.

We will have to look into that. That is one of the problems we are running into, that they may see -- may hear other comments on and on 19.

We have had to sort of look at what we think is clearly -- well, hopefully clearly, but we call it clearly -- clearly going to be in the federal rules which is what tells us what kind of -- the requirements we have in our rules, and this is something we are running into in a number of areas.

COMMISSIONER NEELY: How can we fix it? How can it be fixed? I am serious. Can't you have some kind of a catch-all that would say when the EPA finally makes its mind up or something like that?

MR. FARLEY: We can't do that. We are here to make the rules and that may be sort of maybe the comment here. We are sort of anticipating what may be very clearly what is going to be in federal rules or maybe not, but because we have to do a lot of interaction to find out what our rule really may consist of or what will need to be added with EPA prior to EPA's issuance of finalization of its own rules, we have got to --

COMMISSIONER NEELY: What is the alternative?

MR. FARLEY: Drop these things out until EPA does its rule making, then try to catch up.

COMMISSIONER NEELY: And then what? Then you can include amendments?

MR. FARLEY: We would have to amend the regs later.

COMMISSIONER NEELY: And how long would that take?

MR. FARLEY: That would be another year probably by the time that all happened unless we did them on emergency ruling.

CHAIRMAN THOMAS: We are dealing with the balancing of trying to encompass all of the potential requirements of the federal regs with the state law which to a degree limits our purview to the federal requirements. Those are not published yet.

So what we have to say is that we will have to review that, and if that information isn't received in a timely manner we may have to make some changes in these proposed regulations to accommodate the state law.

COMMISSIONER NEELY: Is there any doubt that vinyl chloride, for example, and all these things are not going to be listed?

MR. FARLEY: Well, see what happened -- and I was explaining that to the Chairman right before this -- when we did the update or proposed the proposed rule last year for 14 changes we left some of the NSHAP hazardous air pollutants in simply because of the way things stood at that point.

We are away from having any new max standards and blanket coverage of facilities other than what is already in the NSHAP. So we felt it was appropriate not to, I guess, rescind that authority for review until the EPA sorted out some of our programs, but if you really want to look at what underpins dropping those out within the Act, EPA basically took all hazardous air pollutants out of the old review of the PSC program when the Clean Air Act was amended.

DR. WALLACE: Because they did cover it elsewhere?

MR. FARLEY: Supposedly it was going to get covered elsewhere within a 10-year period.

DR. WALLACE: But in the interim what covers them?

COMMISSIONER NEELY: Yes, in the interim.

MR. FARLEY: In the interim unless there is a standard that either the state -- it has the ability to do so or EPA has proposed nothing other than what a company would propose just incidental to its permit application.

DR. WALLACE: In anticipation of it being conformed?

MR. FARLEY: Right. I think there is a kick-in date somewhere where if you emit more than a certain amount than it states under the Title III we would have to do source specific max type reviews and all that sort of thing, but there will be a gap in here when there is really nothing covered.

COMMISSIONER NEELY: I would like to know the reason for the request from the Manufacturers Association.

CHAIRMAN THOMAS: If we have somebody to speak to that? I think they are hanging on it being no more stringent than the previous --

COMMISSIONER NEELY: Is this the reason for your request, Ms. Price, that this is the no more stringent clause?

MS. PRICE: If it please the Commission, I would refer that question to John Cummings, who is our attorney.

COMMISSIONER NEELY: Would you like to come up here and be sworn?

(Witness sworn.)

THEREUPON,

J O H N C U M M I N G S

being first duly sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

MR. CUMMINGS: I think that comment is directed towards -- just as we have been talking about various lists that are placed in the regulations, for instance, the definition of VOC that excludes certain substances.

Like Mr. Porter said, there may be six substances that need to be added to that, and in that case we have asked that language be added to allow the Director to include any compound that EPA also excludes separate and apart from incorporating by reference future changes to the federal regulations in order to get over that

problem.

COMMISSIONER NEELY: My question is specifically why do you want the pollutants and the asbestos, beryllium, because it is more stringent? Is that the purpose of asking for this to be removed?

MR. CUMMINGS: Yes.

COMMISSIONER NEELY: Do you think that is responsible?

MR. CUMMINGS: If the substances are covered under other programs.

COMMISSIONER NEELY: Well, Doctor Wallace just asked that question, and in the meantime I got the impression that they are not covered.

MR. CUMMINGS: They will be covered under the residual permit conditions until those change.

MR. FARLEY: The way this really works is they may or may not get covered. It depends on what EPA in the long-term rule making does for specific source categories, decides to write standards on unless the state does its own standards.

There might be source categories where, for example, vinyl chloride, mercury, or lead could be

emitted that are not covered by any federal standards. That sort of falls through the cracks.

COMMISSIONER NEELY: I think that is totally irresponsible to ask for something like this, to ask the Commission to omit this because of a fluke and the fact that EPA has not been able to get their act together to get this out in time.

You are asking us to go an entire year to wait for this to catch up. I don't think that is responsible, and as a proponent to industry I think that that is an irresponsible act.

MR. CUMMINGS: Well, the alternative is that after EPA has come out with these it will take a year in order to change the regulations to catch up with that. These regulations will be coming out from EPA within --

DR. WALLACE: An alternative is to go ahead and modify some of our language here, until such time as EPA comes out and covers it under something else, it will be covered under this.

COMMISSIONER NEELY: Anything so we can pick these up. It is clearly the intent of the Congress that these things be controlled and you are sort of

nitpicking this to death, and I don't think that this is the kind of response I expect from the Manufacturers Association.

MR. CUMMINGS: Well, certainly the intent is that in the interim that they would be covered under the permits. There is going to be some lag time --

COMMISSIONER NEELY: That is a whole year.

MR. CUMMINGS: -- probably a year, before the permits are changed to implement those.

COMMISSIONER NEELY: Okay, thank you.

CHAIRMAN THOMAS: Any other questions?

DR. WALLACE: I don't really have a question. It is really a technical point. On Page 6 of the detailed comment from the Manufacturers Association the date, I think, should be 1992 instead of 1991.

COMMISSIONER NEELY: What is this?

DR. WALLACE: Page 6 of the June 23, 1992 comments it says "Respectfully submitted this 23rd day of June, 1991." You meant 1992?

MR. CUMMINGS: Yes.

CHAIRMAN THOMAS: Are there any other

questions relative to comments on Reg 14? Thank you.

(Witness stands aside.)

In hearing that question raised about the pollutants ostensibly to be regulated under Section 112 of the Clean Air Act, can it be accomplished by putting into the current regulation a reference to that in some way so that when those regulations are ultimately promulgated and include those pollutants that they become a subject of that as opposed to Rule 14?

MR. KOPELMAN: It is a very gray area. The reason I say that is one should always keep in mind that we are a sovereign state. This is our regulation and it is improper to defer our jurisdiction to a third party generally unless it is done with great specificity.

If we had a fall-back regulation that we were deferring to and if we were very specific -- for example, this regulation controls until a set of circumstances happens and we describe how those circumstances happen and why they should happen to make them justifiable, then this happens and it falls back to our regulation -- we probably could get away with it, but unless we had a fall-back to our regulation or unless

there was a justifiable reason to not regulate, we probably could not defer our regulation to someone else's act where they regulate.

Have I totally confused you?

CHAIRMAN THOMAS: No. I understand. Of course, we are confronted with unless we have a justifiable reason to regulate, we cannot do so if we are more stringent than the federal.

MR. KOPELMAN: Without a justifiable reason, that is correct.

CHAIRMAN THOMAS: What we are searching for is a justifiable cause --

DR. WALLACE: Is it justifiable as to be covered within a year within the gap year?

COMMISSIONER NEELY: Is it justifiable or is this an obvious -- I mean, a rule of the Congress that this is in the Clean Air Act? Are we all subject to that rule waiting to be made?

MR. KOPELMAN: If this body believes that is a justifiable reason, then until the court says that it isn't, then it becomes a justifiable reason.

MR. SUTER: If I may -- I don't want to

talk through my hat. I went off and got the Clean Air Act and I am looking through it. I am trying to find the specific section, but it says that "hazardous air pollutants shall not be included under PSD," but later on -- and that is what I am having trouble finding -- it says that if you already have it in place, then you can retain it.

If I am not mistaken, our Code says "no more stringent than" refers to hereinafter the adopted, not that we already have it. I am saying we already have controls in place, that "no more stringent than" refers to things that the Commission may adopt.

This particular section I believe says -- and that is what I am looking for -- that we can go ahead and retain language that we already have. So if I find that section --

COMMISSIONER NEELY: In other words, you don't have to relax your attainment that you have already.

MR. FARLEY: One thing I would point out, those were already in the PSD regulations, that limited number of hazardous air pollutants, and to what extent that is going to be an issue with any kind of PSD permit,

I think in just about every case where we have coke plants or something like that there is trace amounts of beryllium and maybe lead and that kind of thing out of just coal production, but we usually do some kind of PACT review on that.

We did not propose in any way to expand that beyond the current list, meaning that we have 189 hazardous air pollutants. We are not trying to expand. We just thought it would be -- we didn't really see the point in taking out, at least for now, the review authority with the limited number of NSHAPs that were already there.

MR. KOPELMAN: I think it is a good point. It goes back to some trigger, and you have to go back to the history and the genesis of the no more stringent. No more stringent in my recollection has been changed three times; no more stringent, no more stringent unless it is scientifically determined, no more stringent unless it is unique to West Virginia. It has been wooled around.

So each time a regulation falls in place under a particular code, then it is subject to the test of

that particular code. If we originally adopted the control of these hazardous air pollutants prior to the EPA's program rule or plan, then it would be exempt from the no more stringent, and if it was exempt then, then I agree with Randy that it will continue forward. Taking it out would be an option of the Commission not necessarily legally mandated.

CHAIRMAN THOMAS: It was originally included in Reg 14 just for companies.

MR. FARLEY: Yes, sir. Originally EPA had the instruction in the PSD regs that they had -- they covered all regulated pollutants and they specified what were the minimum levels of those and then where they didn't have it spelled out, it would be any increase would trigger a PACT or other type of review.

That and the Clean Air Act Amendments of 1990 -- apparently it was a compromise that was made somewhere.

The concept was to take the hazardous air pollutants out from under PSC review. So we look at the whole 189 substance list. None of that will fall under -- necessarily have to fall under because of federal

requirements the PSD program.

So the only thing we have done in the rule is just retain what pollutants were already listed at least until such time as we decide really what to do with them.

DR. WALLACE: I have one other question on the comment on the six page comments. There was a discussion of the difference between hearing and meeting. By changing the language to read at the hearing or meeting, was that not to imply that they would be held on a more formal basis?

MR. FARLEY: Yes.

COMMISSIONER NEELY: What was that?

MR. FARLEY: I think the understanding is they would be conducted more in the format of a hearing rather than just an informal meeting.

DR. WALLACE: So they would be under the requirements of Code 29 (a) (5) (1), which was referenced?

MR. FARLEY: You are on page?

DR. WALLACE: The idea was that it would be more formal anyway than just a meeting, and they wanted to imply that it would be?

MR. FARLEY: Right, and how formal that -- using the term hearing within a regulation, how formal that kind of information gathering meeting would have to be, I don't know. Maybe Larry could comment on that.

MR. KOPELMAN: Yes. It would step up to the formal requirements of the hearing pursuant to 29.

MR. FARLEY: Which is much more the concept that is set forth in the federal rules.

MR. KOPELMAN: The public meeting was originally conceived under Reg 14 back in the early seventies. Reg 13 was '72 or thereabouts?

MR. FARLEY: Yes, about that time.

MR. KOPELMAN: And the Commission at that time developed the public meeting concept versus the public hearing and allowed the Director to hold that. The federal suggested language is a more formal public hearing.

COMMISSIONER NEELY: Well, public hearing is a more formal concept, and it depends on what we are trying to achieve here. If we are trying to get dialogue and discussions back and forth, I think meetings is a

proper term. It is just input for these hearings.

MR. KOPELMAN: Just off the top of my head, the hearing would require a certain type of notice, where a meeting would not. You-all could adopt whatever standards you choose to apply to a public meeting, or the Director could even choose the form of notice and so forth, and then the method in which testimony is given can be more formal at the hearing and should be by design.

MR. FARLEY: That wouldn't preclude the holding public meetings or informal meetings anyway if somebody wanted to do it that way. We have done that at some permit application --

COMMISSIONER NEELY: It is important to make sure that you can sit down and discuss something. The hearing is so formal -- not as conducted by you, Mr. Chairman, fortunately, but in most cases it is only input and it is very frustrating to be on the other side of the table and not receive any kind of dialogue and feel that you are getting any kind of sense as to making any progress in understanding where your compromises might come. So if it does not preclude public meetings, I don't think it makes any difference.

CHAIRMAN THOMAS: Do you recall the point of reference here where it changed from public hearing to public meeting? Where does it change?

I think that public meetings for input would be conducted by the Director. Public hearings are generally conducted by the Commission.

MR. FARLEY: I don't think there is any pressure by EPA to change it.

MR. PORTER: The federal PSD language uses the term public hearing.

MR. FARLEY: Right. I am not sure that that -- I still don't know whether there is any particular EPA pressure that we change the way we do things, but we try to conform that to what is set up in the federal requirements and also to better define how we would conduct anything like that that is formally requested to the proposed public participation process laid out in the rule.

That still would not preclude us from having informal meetings or publicly announced meetings.

DR. WALLACE: Technically this is a public hearing we are having dialogue on.

COMMISSIONER NEELY: Yes, exactly. That is what I was saying, because Chairman Thomas chooses to do it this way which is, I consider, very enlightening, but I have been places where it is a bunch of dummies sitting up here and no sound is uttered.

CHAIRMAN THOMAS: Are there any other questions or comments?

Does anyone else from the audience want to make a presentation?

Hearing none, then we will conclude the discussion on Regulation 14 and the record will be open for 30 days for comment.

COMMISSIONER NEELY: Are we going to get some kind of a discussion going after Larry talks to somebody about this whole business about Director versus Chief of Air Programs or --

MR. FARLEY: We need to sort that out right away. We will just right away note -- hopefully we can get a meeting and get an understanding of what we ought to be doing, and we will let you know what --

DR. WALLACE: The air is not the only program that has that problem, I am sure.

COMMISSIONER NEELY: I am sure.

CHAIRMAN THOMAS: You will respond to these comments until they give us some of your response before our meeting in which we consider final action on Reg 14.

MR. FARLEY: Right.

CHAIRMAN THOMAS: Larry, in the interim will determine how we can best deal with the issue of reference to Director.

Let's move then to the hearing on Reg 19 revisions, 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.

Dale, do you want to give us introductory comments?

MR. FARLEY: Well, other than what I have already said, this particular regulation is in parts of it -- or at least certain language in some parts -- what is required to be changed to conform to the Clean Air Act Amendment or the requirements thereunder with the dates of June 30 as relates to PM_{10} changes and November 15 as

relates to other pollutants.

This regulation has been around quite some time. It was originally -- the base of the regulation or the regulation primarily implements the old -- I think it is Part D requirements, nonattainment permitting requirements, under the 1977 Clean Air Act Amendments.

We are revamping language that we think is either clearly required by the Clean Air Act Amendments themselves or language that maybe has been changed by some restructuring and EPA Part 51 regs, as they are called, plus the interaction we have had with the EPA and the comments we have had with the EPA as to what is going to be coming down through in their regulations once they are out. So that gives us that same issue as a problem.

We also had from way back in the process something strapped onto this regulation which is called the Bubble Concept that no one is very enthused about but it is there, and we thought at least for the time being we needed to carry some kind of an emissions trading provision which we typed up, I think, pretty considerably as far as definitive requirements or reference to

requirements just to handle certain kinds of alternative emission control plans.

So that being said, unless you have questions on anything I have stated, I would let Dave kind of take you through the changes.

COMMISSIONER NEELY: Emission trading is now what the Bubble Concept used to be; is that what you are saying?

MR. FARLEY: That is what it always was, but I think that what we try to do is more conform this language since that is any emissions trade wherein a company would come in and say "Well, we have a mix; you allow us 10 pounds from this stack and five from this, but we will emit seven and a half from each or something."

Any of those kinds of trades will have to get federal approval as a set provision anyway. So what we have tried to do is, I think, reference that.

COMMISSIONER NEELY: Now this isn't the trading between companies, is it? This is just the trading intra companies?

MR. FARLEY: This is totally intrasource, right.

CHAIRMAN THOMAS: Go ahead, Dave.

MR. PORTER: Do you prefer that I go through it point by point or just hit the high points?

CHAIRMAN THOMAS: Give us a rather quick overview.

MR. PORTER: Okay. Regulation 19 has not been changed in I believe nine years, and the federal regs that require us to have Regulation 19 have been changed quite significantly over that nine-year period. So I have tried to incorporate those changes in 40CFR51.165, which is the emission offset regulation.

I have also tried to incorporate the changes that we proposed in Reg 14 also in 19 since they are parallel regulations. One applies to nonattainment areas and the other one applies to everywhere else.

Everywhere you see Bubble Concept in the old reg, that has been changed to emission trading. There has been some grammatical cleanup. You know, just shall mean has been changed to this means, and a lot of the definitions have been completely changed to match the definitions in Regulation 14.

The federal offset in PSD regulations

have the same definitions where they have the same terms. So we tried to use the same language. Since 14 was more up-to-date, it was easier just to copy the definitions out of 14.

We changed some of the section numbering to match the rules of the Secretary of State and what the different section numbers ought to be and cleaned up some grammatical errors and typos.

Now if we go into it point by point, 2.1 on Page 2, Actual Emissions, it didn't really change the definition, but we took the wording from Regulation 14, just lifted it and inserted it in this reg so they would have identical definitions. The same for Allowable Emissions, 2.2.

On the next page Air Quality Control Region, EPA doesn't use the term Air Quality Control Region any more. It is a Section 107 designated area. It is nonattainment areas or attainment areas, and they are pretty much down in the county level in West Virginia.

So I have completely deleted 2.6, the definition for Air Quality Control Regions, because it would serve no purpose in the regulation.

I have inserted a definition that was missing. The definition of air pollution and statutory air pollution is now 2.6 up at the top of Page 4. That is a definition taken out of Reg 13 and I believe it also exists in Reg 14, the identical definition.

2.8, the additional language and the slight changes are once again to bring it in line with Regulation 14. Now it is practically verbatim with what is in the federal reg.

2.14, Emissions, once again that was changed to match Reg 14.

2.15, we changed facility to emissions unit because everywhere in the federal regulation corresponds to this. Where we have been using the term facility they have been using the term emissions unit. So that was to make it conform to federal regulation, and that is also the way it is done in Regulation 14, the same terminology.

2.17, that was in response to one of EPA's comments. They said that we had to prohibit offsets between VOC and nitrogen oxides. So that is the last line of 2.17. The last line of 2.17, "NOx may not be offset

against VOC."

2.19, Lowest Achievable Emission Rate, that was updated from the federal regulation once again. Facility is now emissions unit, and instead of modified facility it is modified stationary source.

It clears up a little confusion because the modified facility could be the whole installation, whereas the modified emissions unit could be one process area. It originally said facility for both terms.

2.20, Major Modification, same thing, took it out of Regulation 14.

On Page 6, 2.20 (e) (A), changed "legally enforceable" to "federally enforceable" just so we have the same terminology in both regulations and in federal regs.

COMMISSIONER NEELY: What was that?

MR. PORTER: Changed "legally enforceable."

COMMISSIONER NEELY: Is that a good idea? Is that something you want to do in a state regulation?

MR. PORTER: Well, it is required language, and it was one of the definitions that was

required to be in the regulation, federally enforceable. To be part of the SIP it has to be federally enforceable, and anywhere the term legally enforceable or enforceable occurred I inserted federally enforceable.

COMMISSIONER NEELY: Okay.

MR. PORTER: In Paragraph (f) about a third of the way down the page I changed some references because EPA regs changed. 51.24 doesn't exist any more since they changed their regulations around.

2.21 (a) and (b), those were changes -- (b) was just a change to match the language the Secretary of State says we are supposed to have in the regulation for references to sections and paragraphs. (a) was to match the language in Reg 14, Section 2.21, "regulated pollutants" instead of "pollutants subject to regulation."

We took out the major stationary source for volatile organic compounds and put it in a separate definition, once again because that is the way it is in Regulation 14.

(c) Notwithstanding the major source size, that was something from the amendments to the Clean Air Act that changed the definition of a major stationary

source in ozone nonattainment areas and also the CO and PM_{10} nonattainment areas.

I could go through that or just go to the next item. Do you want me to go through an explanation of the different source sizes?

CHAIRMAN THOMAS: I don't think it is necessary. It is pretty clear.

MR. PORTER: On Page 7, 2.23 has been changed to match Reg 14 again.

On Page 8, about a fourth of the way down the page, Paragraph (b), federally enforceable and enforceable by the Commission, once again anywhere there was anything about enforceability I put in federally enforceable.

Paragraph (c), that was in response to a comment by EPA that we must have that language in demonstrating attainment of the NAAQS in addition to the Director having relied on it in issuing the permit.

2.25, once again that references the different categories of nonattainment areas where you have different major source definitions and different required offset ratios. I think this section just references what

the categories are in the nonattainment areas.

2.26, I changed facility to emissions unit again, and the a, b, c, d and e are the offset ratios that are now required in ozone nonattainment areas.

2.27 I changed to match Reg 14 and the federal regs.

2.28, the same thing, although I did add language on federally enforceable and we added the language about consent orders, "enforceable by the Commission in any permit and/or consent order."

COMMISSIONER NEELY: Aren't we getting into problems there, the consent orders may be changed? The concept of consent orders may not be the Commission's to give.

CHAIRMAN THOMAS: May not be the what?

COMMISSIONER NEELY: The Commission's responsibility after --

CHAIRMAN THOMAS: Well, they are now. I don't know what the ultimate --

DR. WALLACE: It is in 14 today, isn't it?

COMMISSIONER NEELY: I know it. This is

a heck of a time to be doing this.

MR. PORTER: The definition of reasonable further progress was changed per EPA's comments. I took their language and inserted it.

2.30, EPA commented that we had to remove the exemption for resource recovery facilities.

COMMISSIONER NEELY: Good.

MR. PORTER: Page 10, changed the definition of secondary emissions to match Reg 14.

On what is now 2.31 and 2.32 the tables that are referenced have been changed. If you prefer, I will just wait until I get to the end of the reg because they are at the end of the regulation.

I changed the definition of source to match Regulation 14. It was a more complicated definition, and now it also matches the federal definitions because they say a source is a building, structure, facility, or installation and then they go on to define building, structure, facility, or installation.

So I have added Section 2.35 at the bottom of the page, the definition of building, structure, facility, or installation.

COMMISSIONER NEELY: It has got "marine vessels while at dockside."

DR. WALLACE: Right.

MR. PORTER: I doubt that there is any place in West Virginia within 25 miles of an outer continental shelf source.

COMMISSIONER NEELY: We would be the closest, I guess, 65.

MR. PORTER: 2.36 is the definition of federally enforceable. That is taken from Reg 14 and the federal regulations.

MR. KOPELMAN: If I could just interrupt right there, that is the reason why federally enforceable was acceptable earlier on and not legally enforceable. If you remember, when we first did 19 the feds wanted federally enforceable and we fought for legally enforceable because we didn't want to give up the sovereignty.

It is our reg and our enforceability too, but now the definition of federally enforceable includes any permit that we issue. So it is a fictitious definition. Within the definition of federally

enforceable it also means state enforceable.

COMMISSIONER NEELY: Who made that up?

MR. KOPELMAN: The feds.

COMMISSIONER NEELY: They actually had that? They said any state or the --

MR. KOPELMAN: Yes. So now it means ours or theirs.

MR. PORTER: That includes any requirement of any of our regulations.

MR. KOPELMAN: Right.

DR. WALLACE: Which regulations are based on the Clean Air Act.

COMMISSIONER NEELY: Hopefully.

MR. FARLEY: That were submitted as part of the SIP.

DR. WALLACE: As part of the SIP.

MR. PORTER: And it also includes language on the Title V operating permits. So that is already in there.

2.37 is the definition of major modification for ozone. We just forwarded it out into a separate definition instead of including it in the

definition for major modification. The same thing with major stationary source for ozone, although we have also added it is a major modification for VOC or NOx. I believe that is in the Clean Air Act Amendments too.

The EPA has required that in an ozone nonattainment area you treat NOx exactly the same way you treat VOC but that you don't add them together and consider them one pollutant.

2.39, the definition of PM_{10}, that is also out of Reg 14. They almost all are.

2.40, VOC, the same thing, but in this list the three compounds that I left out in Reg 14 are there.

COMMISSIONER NEELY: Why?

MR. PORTER: Because I messed up in Reg 14.

DR. WALLACE: He didn't forget them here.

MR. PORTER: Yes. I forgot to put them in Reg 14.

2.41 and 2.42, particulate matter and TSP, those are also in Reg 14. The definition of offset ratio, I don't think that was defined in the federal

regulations, but we felt that it had to be defined somewhere. So we put it in and the definition of USEPA.

3.1, the additional language was put in per USEPA comments. Also 3.2 (a) and 3.2 (b) on the next page were in response to those comments.

COMMISSIONER NEELY: What is a portable facility?

MR. PORTER: They wanted the inclusion of PM_{10} precursors as well as PM_{10}. That is the point of their comment.

MR. FARLEY: I don't think we defined portable facility. We would not include it as a stationary source.

COMMISSIONER NEELY: Do we have a definition for portable facility?

MR. FARLEY: I don't know if we have a definition for portable facility anywhere in any reg, do we? I am not sure. I don't think we do.

COMMISSIONER NEELY: Well, what is it?

MR. FARLEY: It means something that can be readily moved from site to site, but it is still a stationary source. A good example would be a hot mix

asphalt plant. It is on wheels.

COMMISSIONER NEELY: Well, so is a barbecue.

MR. FARLEY: That is what we are referring to here in terms of major sources.

COMMISSIONER NEELY: I see. We have got everything else defined. I don't know why we couldn't define this.

MR. PORTER: I think the EPA hasn't bothered to define it.

COMMISSIONER NEELY: They have or have not?

MR. PORTER: I don't think they have. I may have missed it, but I don't think they have.

That paragraph, except for the grammar change at the top -- that paragraph is exactly -- it has been in there for about nine years.

COMMISSIONER NEELY: I just wonder whether we should have a definition of something like that. If there is such an animal, it should have a definition. I mean, irrespective of whether it has always been there, that doesn't make it right.

DR. WALLACE: There should be a definition somewhere.

COMMISSIONER NEELY: I think so. If they haven't got one, we can make one up, right?

CHAIRMAN THOMAS: Yes.

MR. PORTER: Section 3.4, the EPA recommended that we delete this exemption because there was no provision for exemptions for temporary sources in the federal regulations, and they required the exemption for resource recovery facilities be deleted.

MR. FARLEY: Those are changes to the federal requirements. I am sure those exemptions were originally put in based on federal rules.

MR. PORTER: Well, what they say in their comment is, "Although this exemption is still contained in 40CFR Part 51, Appendix S, EPA could not approve a SIP regulation which contains this exemption." So we pulled it.

4.1, Page 14, top of the page, B, once again we put in standard language for enforceable. It did say just "which is enforceable," and we changed it to "federally enforceable and enforceable by the Commission."

DR. WALLACE: But what Larry said earlier was anything we called federally enforceable can include the state.

COMMISSIONER NEELY: Why do you need that enforceable by the Commission?

DR. WALLACE: Is that not a redundancy?

COMMISSIONER NEELY: Is that a redundancy?

MR. PORTER: It could be.

CHAIRMAN THOMAS: I think we ought to consider leaving that out simply by virtue of the changes in the enforcement structure being proposed --

DR. WALLACE: Right, exactly, yes.

CHAIRMAN THOMAS: Either leave it out or the Commission in its success or whatever, but I think leave it out.

COMMISSIONER NEELY: We had better ask Larry about it. Why did you put it in there, because it has always been in there?

MR. PORTER: No, that wasn't it.

MR. FARLEY: It is probably because I looked at that section of the rule -- if you recall, we

were talking about it, and rather than say federally enforceable I would rather say -- I like the language legally enforceable better, but the EPA insists on the words federally enforceable.

COMMISSIONER NEELY: And so you feel that --

MR. FARLEY: I feel we ought to say state and federally enforceable.

DR. WALLACE: That would be consistent throughout, I suppose.

MR. FARLEY: We can look at that and see.

COMMISSIONER NEELY: We have got a definition though now in here, right?

MR. PORTER: There is a definition of federally enforceable.

COMMISSIONER NEELY: It is in 19?

MR. PORTER: It is in 19.

MR. FARLEY: If that takes care of it, that is fine.

COMMISSIONER NEELY: So you have got your federally enforceable already defined. So you can always switch back.

MR. PORTER: Paragraph C, that change was also in response to an EPA comment. They said that, "Although West Virginia is proposing to add the minimum offset ratios and a definition of offsets, which is in Section 2.26, the regulation itself needs to enclose the offset requirement."

The comments I am looking at are in EPA's April 14 letter.

COMMISSIONER NEELY: I am looking for that. I know we have got it.

MR. PORTER: It is about eight pages long. It is on Page 4, Item 21.

COMMISSIONER NEELY: I think it is the June 22 letter.

MR. PORTER: In D the statement about atmospheric simulation model not required for ozone impacts, that is also suggested language by EPA found in Item 22.

Comment 23 in their letter, we didn't really see the need to delete Paragraph (b), but we did add the Section (c) that they recommended. Phased construction projects, what they thought should replace

Paragraph (b), we stuck that in after Paragraph (b).

In the public participation requirements we added a section later in the regulation, which the whole section was pulled out of Reg 14, public participation.

We added on Page 15, 6.1 (c) -- we added the list of categories that must include fugitives from Regulation 14 with the additional 21 sources that they had in their comments.

When we sent them the draft of Reg 19 we already had added that list minus those 21, and their comment was that, "The list of source categories which much include fugitive emissions and the calculation of potential emissions must also include the following," and this bottom half of Page 5 are the comments and those 21 sources.

They also wanted us to include CTG source categories not already listed and to expand the catchall at the end of the list to include anything required to be regulated under Section 110 of the Clean Air Act. Well, as we didn't know what CTG source categories they were talking about and apparently they didn't have any regs on

them, we didn't see any way to put them in.

MR. FARLEY: That gets to that issue of prospective rule making.

MR. PORTER: And under the catchall we did put a date, as of November 15, 1990, being regulated under Section 110 or 111 of the Clean Air Act. That is the date of the Clean Air Act Amendments.

COMMISSIONER NEELY: Where is that included in here?

MR. PORTER: That is near the bottom of Page 16.

COMMISSIONER NEELY: Oh, yes, "Any other stationary source." I thought we couldn't do that.

MR. PORTER: Well, that is as of November 15, 1990. That is a date in the past. Am I right, Larry?

MR. KOPELMAN: Correct. You can adopt by reference. That is all that does.

COMMISSIONER NEELY: Okay, have we got everything that they have got on Page 5 of their page of their paper in our list without having to --

MR. PORTER: Yes, everything they

specifically list.

COMMISSIONER NEELY: Plus the catchall.

MR. PORTER: They don't do surface coating and printing operations.

COMMISSIONER NEELY: How about outer continental shelf sources? We do have it. That is ridiculous. Why do we have to put that in there?

MR. PORTER: I have tried to tell them we didn't have an outer continental shelf.

MR. FARLEY: I think if we took all of that out it wouldn't make any difference at all. That is just a blanket comment they put in everything. The only reason we kept that in the definitions or the areas we did is because it does somewhat educate one as to what may or may not be considered a secondary source versus primary --

COMMISSIONER NEELY: We don't even know what they are talking about.

MR. FARLEY: But it is ridiculous leaving it in there otherwise.

COMMISSIONER NEELY: I think it is a stupid thing to leave it in there.

CHAIRMAN THOMAS: Moving right along.

MR. PORTER: At the top of Page 6 they said we could grant an exemption for rocket engines.

COMMISSIONER NEELY: Six?

MR. PORTER: This is Page 6 of the comments.

COMMISSIONER NEELY: Rocket engines?

MR. PORTER: We didn't take them up on their suggestion because they didn't say must. They said we could. Anywhere they said we must do something, we tried to do that. OSC sources was one of those things where they said must.

Section 7.1, we adopted some of their suggested language. In their comment they said that this section appears to contradict the definition, but they are wrong. They confused net emission increases and offsets.

Where they say that it appears to contradict the definition of net emission increase, this section refers to an offset, not a net emission increase.

In 7.5 on Page 17 of the regulation we adopted their suggested language, although I stuck in the thing about enforceable by the Commission. So I guess we can strike that out.

In 7.5 (c) I deleted the language they suggested I delete. That is on Page 18, for your information.

In 8.1, their language, and 8.2 A, that is also their language in their comments. On Page 19 about a third of the way down the page, B, I added NOx to VOC for ozone areas.

Also, about halfway down the page, proposed VOC and/or NOx sources; and (c) the exemption, they said that that should be deleted as the state may not exempt any applicable source from these source reviews. That was an exemption for VOC sources.

Their comment 30, they said that the allowance -- this is at the bottom of Page 19 of the reg -- of 180 days for shakedown of the new source must be deleted.

COMMISSIONER NEELY: Shutting down.

MR. PORTER: Yes. They said that this allowance of up to 180 days for an existing source which would be shutting down to provide offsets to continue operation as the new source begins operation must be removed.

That confused me a little bit because there was almost identical language to that in the current federal regulations. Maybe they are going to pull it out in the draft, but it is still in the current federal reg. They said to pull it out, so we pulled it out.

Page 21 we started adding additional sections that were never addressed in the regulation previously, starting with Section 12. These sections were lifted almost verbatim from Regulation 14.

MR. FARLEY: As it was amended.

MR. PORTER: As amended, yes, as the draft has been answered. Section 12, permit requirements; Section 13, public review procedures. There never were any public review procedures prior to this in this regulation. It didn't really even say that you had to get a permit as far as we could tell.

MR. FARLEY: Let me make one comment. What we have attempted to do with Regs 14 and 19 is not only parallel what is now in the Code but also make these regulations contain all the administrative requirements of public participation procedures so that they can stand on their own and you can detach them from Regulation 13,

because ultimately we may do away with Reg 14 or substantially change it in the context of what we do in Title V.

Reg 19 had no written provisions for getting a permit in it at all originally. It just told you what the requirements would be to get one. So we had to attach it to 13. Now we are making it a standard regulation or attempting to or propose to do that.

COMMISSIONER NEELY: Is there anything in any of these regs about where the public hearings take place?

MR. FARLEY: I am not sure whether we have specific language in here.

MR. PORTER: Yes. In 14.2 it just says at a convenient place as near as practical to the location of the proposed major source.

COMMISSIONER NEELY: That is it. As near as practical, who says what is going to be practical, the Director?

CHAIRMAN THOMAS: Yes.

COMMISSIONER NEELY: So if it is in the eastern panhandle, it should be somewhere in the eastern

panhandle, not in Charleston?

MR. FARLEY: When we have had public meetings what we try to do is find us -- contact the Board of Education at the closest school.

MR. PORTER: Section 15, permit transfers, cancellation and responsibility, that is 15, 16, 17. Those are all verbatim right out of Reg 14.

Then we come down to the Bubble Concept. EPA's comment was that this section should be deleted. "As mentioned above, the requirements here are not specific enough to meet the requirements of the December 4, 1986 emission trading policy statement regarding generic bubble rules. Since new sources are not permitted to bubble their emissions, this section is superfluous and must be deleted."

Well, we took out the words Bubble Concept and put in emission trading proposal, and we changed the last paragraph of what is now Section 18 which gave specific requirements on a bubble proposal. We just condensed it down to say that it had to meet all the requirements of USEPA's emission trading policy statement.

What was Section 13, EPA said that this

should be deleted, that it had to do with discretionary decisions made by the Director. Their comment was if there were new source reviews that were being disputed, the source could appeal the permit conditions, but the final decision cannot rest solely with the Commission if the issues relate to federally enforceable permit conditions.

Then on Page 26 we added two sections from Reg 14, conflict with other rules and severability, and finally on Page 27, the two tables I referred to previously, we have added a PM_{10} significance level of 15 tons per year, and in response to EPA's comment we changed the ozone significance level.

That is one that got me. I wasn't aware that it had changed that way to three different levels, one at 40 tons, one at 25 tons determined over a consecutive five-year period, and one zero, which is any amount. That is any amount of VOC. I think it should say VOC on the right column there.

On Table 19B we added the significant concentrations for PM_{10}. That is it.

Larry had some comments on the

regulation. The only one of his -- their suggested changes for 45CSR19 is one page, and it has got highlighting on it.

I have no problem with any of those changes except the last line of 15.4. This paragraph was taken out verbatim from the federal rule, and the change to "even if construction or modification of the source" -- I see no point in making that change.

The idea is that if through some change in emission limitations someone now becomes a major stationary source, they have to start the process as if they hadn't built the plant yet.

COMMISSIONER NEELY: What was the point of that?

MR. FARLEY: That is a matter of wording. Larry reviewed it. He didn't like the federal wording.

MR. KOPELMAN: David just now told me that the language came right out of the feds language. I found it convoluted. I didn't know that. So I don't have any problem with withdrawing my proposal for 15.4.

CHAIRMAN THOMAS: For 15.4?

MR. KOPELMAN: Yes.

CHAIRMAN THOMAS: You have got that federally enforceable issue there again.

MR. PORTER: Oh, okay, yes. It has got that enforceable by the Commission in there.

MR. KOPELMAN: Well, I suggested that because it should be by the -- let me go back and --

CHAIRMAN THOMAS: Well, it ought be consistent whatever we do.

MR. KOPELMAN: Right. It is for consistency purposes. David suggested taking out "or by the Commission." Federally enforceable includes permits issued by the Commission, but it doesn't necessarily include all enforceability.

So I suggest you leave it in where you suggested taking it out, and here where you do say, "or the State of West Virginia," that should be "or the Commission," because the penalties action is brought by the Commission. It is instituted by the Commission. Of course, that will be instituted by the Director, DEP.

DR. WALLACE: As long as the Commission is the authority body.

MR. KOPELMAN: Correct. So I would

recommend "or the Commission" for "or the State of West Virginia" in that, but as far as the continuing on -- and then the "such as the restriction on hours of operations," I think that should probably be in parentheses because it is an example.

In terms of the language where I changed "even if construction or modification of the source has commenced or been completed" to try to make it clearer, I don't have a problem in withdrawing that recommendation.

MR. FARLEY: I think in terms of what is summarized here that I might want to comment on too, is that one, you already saw that in 19.1. We are suggesting we clarify -- this is something Larry raised, is to whether we inadvertently did something we didn't want to do in relation to fees for these permits, and we suggested in 19 as well as 14 that we just make it clear that the base fees still apply.

The other point under what is 15.2, Larry -- I am not sure why it was like that in the old reg. This was taken out of 14 and changed Reg 14. We said, "the Director will cancel or suspend," which Larry said is not a very good word to use in a reg. Why it was

used originally, I don't know, but he suggested we put the word shall in.

The only other thing we wanted to do for clarification was to conform the way EPA -- federal requirements as well as clarify something that is right now a current issue with one major source permit -- is that if you start a project that has a major source permit, I think this should be the same for clarification within both Reg 14 and 19, and you have let the project completely lapse more than 18 months. You have done absolutely nothing.

There should be a way a reg should provide for cancellation of a permit for the simple reason that where you have air quality issues involved, someone can simply commence construction and let the project go forever and preclude anyone else from getting permits within the area.

CHAIRMAN THOMAS: My only concern here is the use of the word shall. Do you want to make it mandatory that you do one of those two things, or do you want to make that may and give you the option to do those two things or something else?

MR. FARLEY: Well, the word had been well. What we did, even all the way back in 13 -- I am not sure whether the word is will or shall. There has always been a provision in the regs that says if you don't act upon a permit, you will lose the permit, and the idea behind that was -- I am sure we might want to think about that a little bit and come back to you in the hearing process, but the idea behind that was because you have air quality constraints.

If someone comes forward and gets a permit and then never follows it up and you cannot get rid of the permit, that person potentially blocks anyone else from getting permits.

CHAIRMAN THOMAS: I don't have any problem with the principal. I just said do you want to make it mandatory that you do that?

MR. FARLEY: It is mandatory now depending on how you construe the word will. I think it is a little softer than shall, but it is mandatory now in both regulations. So it is a matter of whether we would strengthen that somewhat or completely make it discretionary.

MR. PORTER: It is only mandatory if the Director requests that written confirmation.

MR. FARLEY: That is true. We have to ask for proof that commencement has -- in other words, we have to show that commencement has not occurred or that there is not an ongoing process. So I don't know whether EPA in federal language -- do you know whether that is a shall? Does it say the Administrator shall?

MR. PORTER: It is a shall, I believe.

MR. FARLEY: So I guess to conform with the federal requirements or the PSD.

MR. PORTER: And for those first four changes that Larry suggested, if you make the change in Reg 19, since the language is identical in Reg 14, it should also be made in the appropriate section of 14 to keep them parallel.

CHAIRMAN THOMAS: Well, 19.1 does, I guess.

MR. PORTER: Oh, yes, 19.1, yes, it is on both sheets, but 13.3, 15.2, 15.3, 15.4, there are identical sections in Reg 14.

MR. FARLEY: I would agree. I think it

ought to be the same in both regs.

COMMISSIONER NEELY: Is there somebody looking at that precise thing that is going to sit down and look at all of these? Is that what somebody does to make sure that they are consistent.

MR. FARLEY: That they are consistent? We try to do that, but obviously we have not done that in one or two spots there where we have made these last reviews. I think the principal is still the same.

MR. KOPELMAN: To answer that question, Randall Suter's main function is regulation. He was specifically hired to work on -- Reg 33, is it, to Title V -- well, 30. My understanding is his functions include that type of work, consistency, but he wasn't involved with these rules. So we can't blame him. We will take it on ourselves.

COMMISSIONER NEELY: It didn't matter about his watching.

MR. FARLEY: Right. We did it.

CHAIRMAN THOMAS: Any questions? I have one. I notice the EPA opts to use a numbering system that I think does avoid some confusion, like we use 3.01

instead of 3.1, and then when you get to 3.10 -- I think that numbering system is better to start with the 1.01 because in some of these you get up into the double digits.

MR. PORTER: This is a sequential number from one to however far it goes, and they are separated by decimal points.

COMMISSIONER NEELY: Because the Secretary of State put some kind of --

MR. KOPELMAN: They control that. We don't have control.

CHAIRMAN THOMAS: They put the number on it?

MR. KOPELMAN: Yes.

CHAIRMAN THOMAS: Okay.

MR. SUTER: And we try to do it -- we have got a copy of their rules that says how you are supposed to do it. We try to set it up that way so they don't surprise us.

CHAIRMAN THOMAS: Let me address another point. On the public hearings for the granting of a permit under this Reg 19, the Director presides over the

hearing. He sets up the hearing and he generally makes the discretionary decision of whether he will or not grant it, and then you get over here on the emissions trading plans and bring the Commission into that in another hearing.

Would that not be the Director's discretion to deal with that issue also since the Director in the future will be -- of course, I am looking at the executive order.

MR. FARLEY: Well, the executive order -- yes, you may be right. I think the reason it was left that way --

CHAIRMAN THOMAS: All the permitting and enforcing is going to be in the hands of the Director or the Chief of Air Quality or whatever title, and the Commission will not be involved in that.

MR. KOPELMAN: I will give you the history of why that is Commission. In the old Reg 19 the Commission got involved in the Bubble Concept because it was put into a consent order in order to make it both federally and state enforceable, and the theory was all consent orders rested with the Commission.

CHAIRMAN THOMAS: Do they now under the new --

COMMISSIONER NEELY: Will they under the new system?

MR. KOPELMAN: My understanding is -- Dale raised his hand, so maybe he has a --

MR. FARLEY: The only thing I was going to say about this consent order is the reason the Commission is involved in that as opposed to a permit is that when you approve an emissions trade or a bubble, you in essence change the regulations for that particular facility. You are changing their regs.

CHAIRMAN THOMAS: Okay.

MR. KOPELMAN: Now to answer your question will it come back to the Commission, probably not. It appears --

CHAIRMAN THOMAS: That is another issue.

MR. FARLEY: Because that is in lieu of a reg.

MR. KOPELMAN: Bubbles might if you are changing emission limitations.

CHAIRMAN THOMAS: If it is rule making to

change a rule, then it does come back to the Commission.

MR. KOPELMAN: I think that is an area that is going to have to be worked out because let's face it, some consent orders do affect the regulations.

MR. FARLEY: Those particularly change the reg. You change emission limits for a company different from a reg.

MR. KOPELMAN: But if the reg grants the authority to the Director, then it is clear that it would go to the Director. The Commission can do that in the regs.

MR. FARLEY: That is like a -- yes, you can do it that way, if you want to do it that way.

MR. KOPELMAN: What I think I am saying is if you --

CHAIRMAN THOMAS: That is one of those areas that needs to be clarified under the executive order. It has got to come from the Secretary and the Commission to decide what the function of the Commission will be and that perhaps is one of those areas.

MR. KOPELMAN: Yes. As I read the executive order, consent orders -- adoption and

implementation of consent orders will probably be under the Director and will come to the Commission.

COMMISSIONER NEELY: It is a form of enforcement.

CHAIRMAN THOMAS: Yes, what Jean says is correct, and what Dale is saying is there are some consent orders that are tantamount to altering the regulation. With those consent orders then the question is raised as to whether they are strict enforcement for rule making, and if they touch on rule making, then it appears to me under the order that that is under the jurisdiction of the Commission.

MR. FARLEY: Yes. That is the reason it is like that. It is a change in the rule as it specifically applies to a source, and that is also the reason EPA has to approve it -- to change it.

CHAIRMAN THOMAS: That is one of those gray areas that needs to be negotiated with the Secretary.

COMMISSIONER NEELY: What is the time table on this? Have we got another 30 days on these?

MR. KOPELMAN: I was told that by the Deputy Attorney General for Environmental Division. He

said that their understanding is that they are going to proceed to represent their clients for 30 days in July as if the order didn't exist.

In other words, they are going to go forward for another 30 days. I looked through the order just now and I don't see that place. So maybe that is just an understanding between the Attorney General and John Ranson. I don't know. I didn't see it in the order. It is a rumor.

CHAIRMAN THOMAS: You mean it is not effective July 1?

MR. KOPELMAN: No. It is effective July 1. I talked to Bob Pollitt just a few days ago. He said his division, Division of Environment Protection, which represents all of DNR and all other parts of DEP except APCC which has -- that they are going forward as if the executive order has not changed any of their representation.

COMMISSIONER NEELY: But what is going to happen after that? Are they going to have a second look at the Attorney General's office or it drops from view, or are they going to transfer over to DEP or what?

MR. KOPELMAN: I don't know. The Code says in two places, maybe three, that the Commission -- and, of course, the Commission now has dual definition of Director and the Commission, what is left of the Commission -- says the Commission can call upon the services of the Attorney General for legal services.

Now as I read the executive order this morning, Dale as Chief of the Air Branch would have the authority of the Director in the Code, but it is the Commission that calls upon the Attorney General. So there the Director of DEP would call upon the Attorney General for services.

COMMISSIONER NEELY: The thrust of my question was, we have got three regs here today for public hearing. Do we have 30 more days to go on these?

MR. KOPELMAN: Yes, but your authority for rule making has not been --

COMMISSIONER NEELY: I understand, but there are a lot of things that are going to change in two weeks or less -- 10 days -- that these regulations are working with, and this is what is confusing me, is where these are going to come out and whether or not we still

have time to change these after the first of July on these regulations under this comment period in time and so on.

MR. KOPELMAN: I think the only area of confusion is the definition of Director.

COMMISSIONER NEELY: You have got "and the Commission" in here where it is a regulatory matter, for example.

MR. KOPELMAN: That is true. Well, that under the executive order would go to the Director of DEP.

COMMISSIONER NEELY: Then I don't think the language should be in here.

MR. KOPELMAN: That is what we are going to ask Mr. Gillam.

COMMISSIONER NEELY: So we have got 30 more days in which to complete this kind of stuff and to get it -- okay.

CHAIRMAN THOMAS: Well, a lot more will be known in 30 days than we know right now.

Thank you, David. Any more questions for Mr. Porter? Thank you.

We will call for comment from representatives in the audience.

(Witness sworn.)

THEREUPON,

K A R E N P R I C E

being first duly sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

MS. PRICE: Good morning. I appreciate the opportunity to make comments on Regulation 19 this morning on behalf of the West Virginia Manufacturers Association. We have left you with written comments; however, I would like to express our major concerns with the proposed changes.

The definition of actual emissions has been revised to allow the Director to presume that source specific allowable emissions for a unit are equivalent to actual emissions. There are no qualifications or criteria under which the Director would choose to use actual emissions as the measure of allowable emissions.

Use of actual emissions for establishing permit limitations could place manufacturing entities in West Virginia at a competitive disadvantage vis-a-vis manufacturing entities in other states because permit

modifications would be required each time their product mix was changed in such a way as to cause even a nominal increase in actual emissions.

Permits should be written to anticipate a reasonable cushion between actual and allowable emissions. The federal Clean Air Act Amendments do not require that allowable emissions be set at actual emission levels.

It is unclear to the WVMA what the changes in the definitions for major modification and major stationary source are intended to accomplish since they depend upon the emissions of any regulated pollutant.

We would suggest a definition for regulated pollutant be included stating that the term applies only to pollutants for which the Commission has promulgated emissions limitations.

As proposed, the regulatory requirements that are applicable to stationary sources of VOC also apply to major sources of nitrogen oxides except where a determination has been made that the net air quality benefits are greater in the absence of the NOx reductions from the sources concerned.

The Clean Air Act states NOx reductions

are not required in those areas where it is determined that reductions in NOx would not contribute to attainment. The WVMA therefore suggests the proposed provision be revised to reflect the federal language.

Further, we are concerned about the proposed limitation which denies sources credit for emission reductions to those that occur on or after the design year for the most current attainment demonstration. Such limitations are not imposed by the Clean Air Act.

As proposed the regulation does not require the Director to notify a permit applicant of any additional information needed to complete a permit application. It only requires the Director to determine if an application deficiency exists. A permit review and issuance could be delayed for several weeks or months.

This concludes my remarks and I again wish to thank you.

CHAIRMAN THOMAS: Any questions of Ms. Price?

MR. FARLEY: I don't think. I need to catch up and read here.

(Witness stands aside.)

MR. FARLEY: For clarification of the Commission, I would like to ask Dave what the definition of actual emissions, particularly in that regulation -- Dave, what triggered that?

MR. PORTER: It came from Section 2.23 of Reg 14.

MR. FARLEY: We took the language that was already in existence without any change whatsoever and put it over into Reg 19.

COMMISSIONER NEELY: Two point what?

MR. PORTER: 2.23.

COMMISSIONER NEELY: Okay, thank you.

MR. FARLEY: The only change is the word --

COMMISSIONER NEELY: May.

MR. PORTER: The Director may instead of the Director shall. That is it. That is the only change in Section 2.23 of Reg 14. That is the language we took and put in Reg 19.

COMMISSIONER NEELY: How much of a difference is there between actual emissions and allowable emissions? Isn't allowable emissions supposed to be a

target?

MR. FARLEY: There can be huge differences. It depends on what your actual emissions come from, whether it is -- they are talking about sources. Where we say source specific that usually means a permit or something like that, but when you are talking about all the rules or maybe fairly lenient permits, that could be very, very huge differences.

That has been a big issue with one or two PSC permits that have been around for some number of years. We are going to have to look into that. I won't try to make any comment on the ruling under that because that is a pretty complicated area.

MR. PORTER: That language exactly matches also the federal reg.

MR. FARLEY: What is in there now, may is the word?

MR. PORTER: The reviewing authority may presume that the source specific allowable emissions for the unit are equivalent. That is in the federal reg.

MR. CUMMINGS: In what situation is that?

MR. FARLEY: We will look into that.

CHAIRMAN THOMAS: There ought to be some rationale why that is done.

COMMISSIONER NEELY: Yes.

MR. FARLEY: That whole provision about using source specific, if you look at the PSD regulations, they are built on the concept of actual emissions changes ensuing from modification. In other words, what the net actual emissions change is for determining whether you have to get a permit and what type.

I am not sure how in carrying that over to the NSR for the nonattainment areas whether that should be directly parallel or not. I will have to look into that considering how the regs were constructed in the past.

One of the things that we have gotten into on that actual thing where we have talked about using source specific allowable emissions in lieu of actual, that has usually been something where we are in a permit review case and you have a facility that has been issued a permit, and the only thing that you can use to assume -- the only thing you can assume with the actual emissions is what you have permitted. It has not been constructed and

does not have an operating history. Therefore, you have to refer back to the permit.

That is one issue. That is a little bit complicated, and we have had issues with EPA about using actual emissions -- literal actual emissions for netting purposes or for permit determination purposes in lieu of using source specific allowable.

So there has been a couple of controversies that we have incurred in that provision. That has been in cases where a company had literally -- in relation to Commissioner Neely's question -- much, much lower actual emissions originally permitted because they simply never got up to their production.

So that is something that is a little bit complicated, and we will look into that when we come back --

COMMISSIONER NEELY: The question here, though is that the manufacturers in West Virginia would be unable to respond to changing market conditions on a timely basis if they changed their product mix without getting a change. It sounds to me like it is pretty tight, and if they are going to be able to change their

product, is no trade-off or anything possible?

MR. FARLEY: I think you are getting at -- unless I am misreading; I will have to read this a little better. I think what they are getting at is if you always rely literally on actual emissions instead of going back and saying well, yes, issue a permit that allowed up to so much -- you know, so many tons per year or whatever, for determination of permitting requirements, then they have a considerably more difficult time operating in what is --

This gets into sort of the operation flexibility issue that might be inherent in the Title V permits, is that once you have gone through a source specific type review and allowed an X amount of pollution of a class of compounds like B or C or whatever, then they should be able to operate within our granted emission level as opposed to being held to a historic say two-year period of emissions.

So without further comment on that -- I know that has been kind of a mess when you look at what EPA is doing specifically to utilities in looking at netting calculations and without -- I think we need to

look into that a little bit further, the whole issue as to where EPA stands in its rule making versus what we should do.

CHAIRMAN THOMAS: Do you want to respond to any of these other comments about the definition of regulated pollution?

MR. FARLEY: That is still just the same issue as to whether we ought to include -- or maybe we inadvertently included because this is a nonattainment rule. Those aren't really like hazardous air pollutants at all -- whether those ought to be included under -- is that what that issue is about, regulated pollutants?

MR. CUMMINGS: We just want to have the clarification that is in Reg 14 that indicates which substances are regulated pollutants.

MR. FARLEY: Well, within Regulation 19 -- and we may have inadvertently carried something over; we will look into that -- the only pollutants that should be even considered under 19 are criteria air pollutants because that is the only thing the reg really deals with.

So if we have inadvertently carried

anything over other than strictly criteria pollutants, we will probably end up deleting that. We will look at that. Fourteen is different than nineteen. It is only for nonattainment -- only nonattainment permitting procedures.

MR. KOPELMAN: And VOCs.

MR. FARLEY: That is used interchangeably.

I am not sure too many of the issues raised here could be dealt with readily without looking into them. The issue, for example, about the completeness determination, maybe we just need to print the language there, but completeness determination means to us within 30 days we issue a letter saying what is grossly deficient.

We may not get all the details in there about what is incorrect, because sometimes that cannot be done in 30 days, but it means if there are whole sections in an application missing or whatever, those things are flagged within 30 days.

Ideally if it is an application manageable to do that, that is something we can give a very detailed list of all the things that are missing or

incorrect or whatever. That is what our usual goal is in our completeness determination. Whether we actually list every little detail --

CHAIRMAN THOMAS: You give all the information that they are concerned with here, but it is not a valid permit application if any additional information is needed to complete the permit?

MR. FARLEY: Right. I think within the context of the 30-day review what you are really talking about is giving the most detailed review you can, but the real point of that within the federal constraint was if you have to have a backed analysis, like the PSD, a backed analysis and air quality analysis and all the other major components to that, you would look quickly to make sure they are all there, and to the extent possible you would review each component part of it for deficiencies.

But many, many times within 30 days if you have a very, very lengthy detailed application you can't review every rule, not in detail.

So that would be something that would probably come after the first pass in looking for major provisions.

CHAIRMAN THOMAS: Okay. Any other questions on Reg 19? Any other comments?

If not, that concludes our hearing on Regulation 19 modifications, and we will take a five-minute break.

(WHEREUPON, a recess was taken, after which the following proceedings were had.)

CHAIRMAN THOMAS: Let's reconvene our hearing of the Air Pollution Control Commission. We will proceed now to the hearing on proposed Regulation 29, the regulation requiring submission of emission statements for volatile organic compound emissions and oxides of nitrogen emissions.

Mr. Farley, do you want to --

MR. FARLEY: This is one of a laundry list of prescribed things under the 1990 Clean Air Act Amendments we would have to do for our ozone nonattainment areas -- we will talk about that later -- assuming those all remain nonattainment areas.

To explain the rule and then some revisions or suggested language changes that Larry

Kopelman made to or provided to us on the last draft of it, I will turn that over to John Benedict.

MR. BENEDICT: My name is John Benedict. I am Chief of the Air Programs Section within the agency.

It is a new regulation. It requires for ozone nonattainment areas that stationary sources emitting volatile organic compounds of nitrogen oxide to report on an annual basis to the Commission their actual emissions for a given year.

It is required under Section 182(a)(3)(b) of the Clean Air Act Amendments. The actual -- the regulation is due November 15, 1992. Obviously we will not meet that date. Some of the basic requirements of this proposed regulation is the annual reporting of emissions of VOCs and nitrogen oxides for stationary sources.

At this point stationary source is defined as any stationary source emitting 10 times greater VOC or a hundred times greater NOx in ozone nonattainment areas. It requires sources -- or at least the EPA would like to have sources submit this information -- the basic emissions information -- to the agency by April 15 each

year. The reason being is that the agency is to provide this information in the AIRS computer format to EPA by July 1 each year. So we have to have some lead time in order to compile the information and get it into the AIRS data base.

The Clean Air Act requires 1993 be the first year reporting, three years after the enactment of the Clean Air Act.

COMMISSIONER NEELY: Are we talking about calendar or fiscal years?

MR. BENEDICT: Calendar. Primarily it requires reporting actual emission estimates for a calendar year -- for the given calendar year and a typical summer day. When you hear the term "typical summer day," that generally refers to days during June, July and August where West Virginia has most of their ozone exceedences.

This emissions reporting requirement basically goes hand in hand with the planning activities we are to do for ozone in that this agency is required to track emissions to determine the progress of how we are going to meet the necessary reduction specified by the Clean Air Act. It has to be certified by a company

official that the emissions are true. Those are the basic requirements.

One thing we have got built into the regulation -- it is mentioned several times, and I believe that is on Page 6, starting on Page 6, the emission statement requirements -- you will see dotted throughout the requirements that we are basically asking the companies to provide certain fundamental information in a coded format.

This hopefully will allow this agency to have a quick turn around to provide this information in the required AIRS computer data base required by EPA.

So we envision that during this initial ozone inventory work that we are doing this year with the help of a contractor that we will be provided with a computerized data base that we are able to give the individual stationary sources which would enable them to more easily compile their emissions inventory and update that on an annual basis.

That is one of the reasons we are specifying that certain data elements are to include codes that we will provide the stationary sources.

The copy I believe you are working off is a copy based on comments Larry gave us yesterday, and primarily the corrections to the rule proposed is just for a matter of clarity. Case in point, on Page -- for instance Page 5, applicability, generally the old regulation we filed with the Secretary of State's office did not really have that section.

We relied mostly on the scope for the first paragraph of the regulation, and Larry felt that that should be repeated and we have come to agree with that.

So there are no substantive changes to the regulation. It is just for a matter of clarification. That is all I have.

CHAIRMAN THOMAS: Any questions of John?

Roughly how many facilities -- do you have any idea -- will fall under this requirement?

MR. BENEDICT: No. We don't, because we have historically never done extensive ozone planning. We are hoping the 1990 base year inventory will pick up a lot of sources that we never considered previously in our report, but we primarily concentrated on Step II, the

surface coaters, the paint shops and these types of activities that could be significant.

We don't really have a good count of what we would classify as a major stationary source. I will say this, my office is full of questionnaires that our MRI supplied us with mailing labels. There is 19 boxes with 1,500 questionnaires, and that is basically statewide, but a good portion of that is in concentrated areas.

COMMISSIONER NEELY: How did you get that list?

MR. BENEDICT: From our certificate to operate is our initial list, plus we had MRI, our contractor, to look through the manufacturing directory and compare SIC codes to employment levels, for instance, and to acquire additional data bases for the mail out.

COMMISSIONER NEELY: We don't get any joy from the Secretary of State's office, I take it.

MR. BENEDICT: We never even contact that and from the discussions we have had with Larry, they won't really tell you what facilities are shut down. It is not a very current list. You are likely to get whoever filed with the Secretary of State from the early 1900s.

Personally, 1,500 forms are enough to mail out. I don't want to tackle any more.

CHAIRMAN THOMAS: Is it changed from regulation to rule, the nomenclature that the EPA is using? Is that what we --

MR. BENEDICT: We have used them interchangeably. I always kind of thought maybe we ought to just use one or the other, but being the legislative rule making calls them rules, I guess we should be more consistent with them.

CHAIRMAN THOMAS: Should this not be titled nonattainment areas since that is the areas which are involved?

MR. FARLEY: We could do that. It is not something we put on the label originally.

COMMISSIONER NEELY: It is there under scope.

CHAIRMAN THOMAS: Yes, but in the title of it shouldn't it more specifically state who it applies to?

COMMISSIONER NEELY: You want that sentence to go up in the title?

CHAIRMAN THOMAS: No, just finish the title to say for nonattainment areas.

MR. BENEDICT: I can see one potential conflict in that if EPA arbitrarily designates an area as nonattainment, then that may make this regulation applicable --

CHAIRMAN THOMAS: Well, but it is qualified by the use of counties down below, nonattainment right in these counties.

COMMISSIONER NEELY: You would have to put another definition then, what is nonattainment under two point whatever.

CHAIRMAN THOMAS: Well, that is not critical. It better describes what --

COMMISSIONER NEELY: Well, it says its scope. At least it is stated in the regulation, which is actually better because it describes precisely what --

CHAIRMAN THOMAS: And that is what we want.

COMMISSIONER NEELY: Yes. We just have to redefine it.

CHAIRMAN THOMAS: Any other questions of

John? Thank you, John; good explanation.

Any other persons?

(Witness sworn.)

THEREUPON,

K A R E N P R I C E

being first duly sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION

MS. PRICE: Thank you. I appreciate the opportunity to comment for a third time this morning on Regulation 29 on behalf of the West Virginia Manufacturers Association.

I would like to talk to you this morning about our major concerns with the proposed regulation, and we have left written comments that go into greater detail.

Without definitions of the terms "upsets," "downtime," and "emission estimation method," it will be extremely difficult for any source to compute emission estimates as required in Section 2.1.

It is unclear as to the relevance of the term solid waste as it is used in defining the term "annual fuel process rate" in Section 2.5.

There does not appear to be a technical justification for the 10 percent reduction in efficiency when the design efficiency is used rather than the actual control efficiency of a pollution control device.

Other technically justifiable reductions should be allowed to be used instead of a fixed percentage. SARA Title III reporting requirement for specific compounds already allow different control efficiency adjustments factors, and we would suggest that the proposed regulation be made consistent with them.

We suggest that ozone season be more accurately defined. The word plant as used in defining the term point in Section 2.21 should be replaced with the word facility.

There is no indication in the proposed regulation of the mechanism for how the Commission will exempt additional photochemically nonreactive organic compounds as listed by the EPA.

The Association is particularly concerned with the proposed requirements to submit point-by-point operating data which includes percentage annual throughput for a typical ozone day. Such information is likely to be

confidential and not necessary for the protection of the public interests.

Submission of point-by-point operating data, rather than aggregate facility emissions data, is not required by the Clean Air Act. We recommend that this proposed requirement be deleted.

Section 4.1.f.2 requires submission of process rate data for the peak ozone season daily process rate. The Association again objects to submitting operating data, rather than emission data, as required by the federal Clean Air Act and requests this section be deleted.

For consistency with SARA Title III requirements the Association recommends that certain records be retained for three rather than five years.

Again, thank you for the opportunity to make comments on Regulation 29 on behalf of the Manufacturers Association.

CHAIRMAN THOMAS: Any questions of Ms. Price?

MR. FARLEY: Just one, Karen. In relation to your comments about the content of the

emission statement, I would assume John may speak to that. One of the reasons we asked for that point-by-point data was, I guess, for one thing just to make sense of the data, but you probably are aware that the states have been obligated forever and we haven't been doing it -- I don't know if any other states do it or not -- to submit an annual emission inventory of major sources each year.

I think one of the things that was probably the intent here was to acquire enough data to update those data files to AIRS specification. Otherwise, we are going to have to ask people to do the same form twice. So that is a point I think maybe ought to be made in relation to those last comments.

MR. CUMMINGS: If it is required -- if there is any way to get around doing that point-by-point every year though --

MR. FARLEY: There has been a requirement in the state and federal regulations forever that every state -- we have never done it. We have done two and a half inventories in 20 years to my knowledge statewide -- every state's annual emissions update of its major sources.

Obviously, I think everybody would rather prefer that once we have established what those minimal data elements are we ask for people to submit it once. It would be combined.

That is the only thing. I don't know whether that is the rationale or not, John. You can make a comment on that.

MR. BENEDICT: Point-by-point?

MR. FARLEY: Yes.

MR. BENEDICT: First of all, they would have to do a point-by-point analysis to compile emission estimates anyway in my opinion, and EPA is very serious about tracking the pollutants, precursors to ozone formation. When we do our modeling analysis it is very important to compile hourly emissions. For that reason they would have to go on a point-by-point basis.

I think they are suggesting to do a broad reporting much similar to like SARA 313, and that program was never designed to the level of detail required for ozone planning. So I really don't think that is unreasonable to require them to file certain points of specific information.

CHAIRMAN THOMAS: You think it needs to be done annually?

MR. BENEDICT: Yes, and again I envision that once this system is computerized they can merely go in on a point-by-point basis and just change the annual processing rate for that particular year and some estimation of a typical summer day. That doesn't necessarily have to be in a single day, just an average of what you think a three-month operating rate would be.

So I think it is very important -- and a minimum includes throughputs also to verify emission estimates.

Some of the other things -- I did not look at the comments. I don't know all the specifics. One thing about the arbitrary 10 percent reduction, if you do not know your actual control equipment efficiency, I don't think that is unreasonable.

One thing EPA found when they did a survey of a lot of the states that already submitted ozone plans was that facilities would typically indicate that their control equipment was operating at design efficiency whereas when EPA did audits of these facilities --

compliance audits -- they found in actuality in most situations the piece of control equipment was only operating at 80 percent its maximum efficiency.

So I think giving 10 percent is actually giving industry an additional 10 percent. Generally, they would have information to reflect the actual efficiency of that piece of control equipment, either charts or whatever information, to indicate that that piece of equipment was operating almost continuously while in the process of operating.

So I think that is fair and reasonable. However, we will look at their comments in detail and make suggestions.

CHAIRMAN THOMAS: Any questions of him?

COMMISSIONER NEELY: Obviously, I don't know anything about this, but why would information like this operating data be confidential? I mean, can your competitors know what you are making by the color of your smoke or something?

MR. CUMMINGS: By what goes in the process, yes, that can be calculated.

COMMISSIONER NEELY: Why do you care if

you are making this compound or that compound or something else?

MS. PRICE: You care because if your competitor can know what you are making, he can maybe cut into your market.

COMMISSIONER NEELY: Isn't it a matter of public record what you are making in a plant?

MS. PRICE: What you are making, your product maybe but not --

COMMISSIONER NEELY: The components of it?

MS. PRICE: -- what goes into it.

COMMISSIONER NEELY: Oh, I see.

MR. CUMMINGS: That information is in the permit application, but it is protected confidential information.

COMMISSIONER NEELY: Well, can't this be protected a little bit by -- does this get published? Would this be published?

MR. FARLEY: It would generally be available except where data items -- there are certain data items in an inventory, computer data bases, AIRS and

other things, that can supposedly be blocked. They can be held confidential and blocked.

We don't put confidential data in computer files typically anyway because we don't trust the access, but one of the things that I think just about all companies claim -- at least chemical manufacturers claim confidential across the board -- is their yearly production -- throughputs production rates, which that is just about in all inventory systems. Even though simple, that would be asked for.

MR. STEWART: And I am not sure that really your plant throughput necessarily affects what your emissions are.

CHAIRMAN THOMAS: Would you identify yourself please for the record?

MR. STEWART: I am Walt Stewart for DuPont Company. I don't think necessarily throughput through a plant necessarily affects emissions. It depends on the control devices you have on it.

MR. FARLEY: I can tell you just simplistically that when EPA compiles emission factors there is usually the assumption that the more stuff you

put through, the more emissions you have. That is not always true, as he said, but usually in putting together emission factors it is done. People attempt to do it on the amounts of emissions per unit of throughput.

So the only thing that data really does unless you are asking for calculations, which sometimes we would, is to give you a frame of reference where you might be comparing like similar units, how much is emitted from one unit per unit production compared to another just to see what the comparison is.

I am not sure how many units we have that are that alike.

MR. STEWART: Another area that the Commission needs to be sensitive to is the cost of doing this. For our facility -- now under the old air emissions inventories, it took us two man years of work to put together the information that went into those inventories. So it is not without cost to the companies that are doing this.

There was a lot of information, and basically what I am hearing is you want the same type of detailed information.

MR. FARLEY: The only comment I would like to get back on is to reiterate that same point that the state is already supposed to be doing that -- I mean, compiling even more information than is identified here for just annual inventory updates and, of course, this is now mandated by the Act as far as whatever the emission statement has to be annually. So ideally those would conform to each other.

COMMISSIONER NEELY: So this would be required by all of the states no matter -- you are from DuPont, for example, so your plants no matter where they were in the country would be doing the same thing.

MR. STEWART: We would hope so.

CHAIRMAN THOMAS: If they are a nonattainment area.

COMMISSIONER NEELY: That is what I am talking about.

CHAIRMAN THOMAS: Any other comments, questions?

COMMISSIONER NEELY: All of these things will be taken into consideration during the --

CHAIRMAN THOMAS: As normal format we

would get a response to each of the major issues in the hearings.

COMMISSIONER NEELY: Is there any reason for us to keep these? Should we keep these?

MR. FARLEY: You might want to --

COMMISSIONER NEELY: Just hang onto them.

MR. FARLEY: We will try to summarize what the comments were, but you might want to keep them for your own reference --

COMMISSIONER NEELY: Okay. I will do that.

MR. FARLEY: -- as to whether we summarize them right.

CHAIRMAN THOMAS: If there are no further comments, we will adjourn the hearing of the West Virginia Air Pollution Control Commission.

(WHEREUPON, at 12:15 p.m., the hearing was concluded.)

REPORTER'S CERTIFICATE

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

I, Donna Kay Miller, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the testimony adduced or proceedings as set forth in the caption hereof.

Given under my hand this 16th day of July, 1992.

Donna Kay Miller
Certified Court Reporter