

*Superseded  
7/7/93*

**TITLE 45  
LEGISLATIVE RULES  
AIR POLLUTION CONTROL COMMISSION**

**SERIES 19  
REQUIREMENTS FOR PRE-CONSTRUCTION REVIEW, DETERMINATION  
OF EMISSION OFFSETS FOR PROPOSED, NEW, OR MODIFIED STATIONARY  
SOURCES OF AIR POLLUTANTS AND BUBBLE CONCEPT 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 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", 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 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 Article 20, Chapter 16, of the Code of West Virginia, of 1931, as amended, 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

noncompliance.

1.2. Authority. -- W. Va. Code §16-20-5

1.3. Filing Date. -- April 27, 1983

1.4. Effective Date. -- May 27, 1983

**§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.

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 regulation 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.

2.3. "Applicable Regulations", shall mean, 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 any person who makes application to the Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of this regulation.

2.5. "Air Pollutants", shall mean 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, Pleasant, 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.

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

2.8. "Begin Actual Construction", shall mean, in general, initiation of physical on-site construction activities on an emissions facility or source 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 this term refers to those on-site activities which mark the initiation of the change.

2.9. "Code", shall mean principally Article 20, Chapter 16, of the Code of West Virginia of 1931, as amended, and where applicable, Article 5E, Chapter 20 of the Code of West Virginia Air Pollution Control Commission.

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

2.11. "Commence", shall mean as applied to construction of a major stationary source of major modification that the owner or operator has all necessary pre-construction approvals or permits and either has

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

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator,

to undertake a program of actual construction of the source to be completed within a reasonable time.

2.12. "Construction", shall mean any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

2.13. "Director", shall mean the Director of West Virginia Air Pollution Control Commission.

2.14. "Emissions", shall mean both direct emissions resulting from the operations of a source or facility and those secondary emissions which are defined and quantifiable and result from activities related to such source or facility.

2.15 "Facility", shall mean an identifiable piece of process equipment. A source is composed of one or more pollutant emitting facilities.

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

2.17. "Intrapollutant Emission Offsets", shall mean that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub> reductions or coke plant particulate matter may not be offset against boiler fly ash).

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

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

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

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

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

2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any 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) Routine maintenance, repair and replacement;

(b) Use of 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 natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of alternative fuel by reason of an order or rule under section 125 of the Clean Air Act of 1977, as amended;

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

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

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any legally 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 or 40 CFR 51.24; or

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

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any legally 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 or 40 CFR 51.24;

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

2.21. "Major Stationary Source" shall mean:

(a) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation by the Commission; or

(b) Any physical change that would occur at a stationary source not qualifying under section 2.21 (a) 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.

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

2.23. "Necessary Pre-construction Approvals or Permits" shall mean, for the purpose 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. Where a consent order is required to be submitted to the United States Environmental Protection Agency for inclusion in the State Implementation Plan, the applicant will not have all necessary pre-construction approvals or permits until such time as the United States Environmental Protection Agency approves such consent order for inclusion in the State Implementation Plan.

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

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

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

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

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

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

(c) The Director has not relied on it in issuing any permit under this regulation 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) An increase that results from a physical change at a source occurs when the emissions facility on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement facility that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.

2.25. "Nonattainment Area", shall mean 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.

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

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

2.28. "Potential to Emit", shall mean 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 enforceable by the Commission under the Code and by the United States Environmental Protection Agency under section 113 of the Clean Air Act. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in

nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality Standards "(NAAQS)".

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.

2.31. "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 emissions 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.

2.32. "Significant", shall mean, 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.)

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

2.34. "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.

2.35. "Temporary Source", and "sources of tempo-

rary emissions", shall mean 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. 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 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. This regulation shall also apply 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 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 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 NAAQS or a significant impact shall be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

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

3.4. Sources of temporary emissions such as pilot plants, portable facilities which will be relocated

away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, or resource recovery facilities utilizing municipal solid waste to provide more than fifty percent (50%) of the heat input for generating steam or electricity may be granted an exemption from the requirements of this regulation by the Commission upon a demonstration by such source that such source will not significantly interfere with reasonable further progress toward attaining and maintaining the applicable NAAQS, except, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

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

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

(2) 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 Article 20, Chapter 16, 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 enforceable under the Code and section 113 of the Clean Air Act;

(3) 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. Only intrapollutant emission offsets are acceptable;

(4) The emission offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of subsection 4.1(a)(3) above and subsections 8.2 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or economic limitations on the application of measurement methodology to a particular source or class of sources would make the imposition of an enforceable numerical emission standard infeasible, the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

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

Upon determination by the Director that the emissions from a proposed new major stationary source or major modification locating in attainment or unclassified areas would cause a new violation of a NAAQS, permit approval may be granted only if the applicant agrees within its permit application and permit (if approved) to meet a more stringent emission limitation and/or limit emissions of existing sources below levels allowed by the applicable regulations so that the proposed source will not cause a new violation of any NAAQS. Only intrapollutant emission offsets are acceptable.

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

6.1. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of subsections 4.1(a)(3) and (4), and sec-

tion 5:

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

(2) Sources which must switch fuels:

(A) due to lack of adequate fuel supplies; or

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

(b) such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with subsections 4.1(a)(3) and (4) and section 5, and that such efforts were unsuccessful; and

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

(3) 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) The baseline for determining credit for emission offsets will be the allowable emissions in effect at the time the application to construct or modify a major stationary source is filed.

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

(c) The Director may specify other averaging periods, such as tons per year, as an alternative to the pounds per hour basis if necessary to carry out the intent of this regulation. When offsets are calculated on a tons per year basis, the baseline emissions for existing sources providing the offset shall be calculated using the actual annual operating hours for the previous one year period (or other appropriate period if warranted by cyclical business conditions as determined by the Director).

(d) 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 7.1.

7.3 Where the applicable regulation emission limit allows greater emissions than the potential emission rate of the source, emission offset credit will be allowed only for control below the potential emission rate.

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

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

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

7.5. (a) A source may be credited with emission reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels.

(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 Nine herein.

(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 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-Trichlorethane (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.

8.2. (a) The Commission, by petition, may allow offsets from sources located at greater distances from the proposed major stationary source or major modification provided that an adequate demonstration that nearby offsets were investigated and reasonable alternatives which provide a positive net air quality benefit are not available is submitted by the applicant, subject to the following:

(1) Emission offsets for volatile organic compounds (VOC) will generally be acceptable from sources located within the same Air Quality Control Region (AQCR) or from other areas which may cause or significantly contribute to the ozone problem at the proposed new or modified source location;

(2) Emission offsets for sources of sulfur dioxide (SO<sub>2</sub>) and total suspended particulates (TSP), should be obtained from an existing or shutdown facility, on the same premises or in the immediate vicinity of the proposed source.

(b) If such allowance is granted, as provided for in Subsection (a), of this section, the Commission should increase the ratio of the required offsets for such source.

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

(d) The appropriate modeling referred to in section 8.2 (c) above is as follows:

(1) For sulfur dioxide (SO<sub>2</sub>) 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 4.1(a)(4) 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) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Subsection 4.1. (a) (3) and Subsection 8.2 (a) (1) will be adequate

(3) (a) Proposed sources of volatile organic compounds (VOC) locating in a designated nonattainment area for ozone shall be subject to the provisions of section 4 of this regulation.

(b) Proposed VOC sources locating within thirty-six (36) hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a nonattainment monitor shall also be subject to section 4 of this regulation.

(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<sub>x</sub> to form additional ozone.

#### §45-19-9. Administrative Procedures for Emission Offset Proposal

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

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

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major stationary source or major modification, the offsets committed to must be embodied in a United States Environmental Protection Agency approved State Implementation Plan revision in the neighboring state and must be legally enforceable by both such neighboring state and the the Commission in accordance with the Code and the United States Environmental Protection Agency in accordance with Section 113 of the Clean Air Act.

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

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

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

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

9.3. Any emission offset proposal described in section 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 Article 20, Chapter 16, Section 5 Subsection (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 2.23 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 2.33 would be exceeded.

(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) For total suspended particulate (TSP) and sulfur dioxide (SO<sub>2</sub>). The areas of impact shall be determined by modeling in accordance with subsection 8.02 (d).

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

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

#### §45-19-12. Bubble Concept for Intrasource Pollut-

ants.

12.1. 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 control technology. No bubble concept design 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).

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

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

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

#### §45-19-13. Discretionary Decisions made by the Director.

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

TABLE 45-19A

Carbon monoxide:	100	tons per year (tpy)
Nitrogen oxides:	40	tpy
Sulfur dioxide:	40	tpy
Particulate matter:	25	tpy
Ozone:	40	tpy of volatile organic compounds
Lead:	0.6	tpy

TABLE 45-19B

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