WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3 ◘

Do Not Mark In This Box

RECEIVED
00 SEP -1 PM 1:37
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

CITE AUTHORITY: WV Code §22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 30

TITLE OF RULE BEING AMENDED: "Requirements for Operating Permits"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

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

Carrie J. Chambers
Authorized Signature

$16.00

Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526

West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 31, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 45CSR30 - "Requirements for Operating Permits"

Dear Ms. Cooper:

This letter will serve as my approval to file the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as "Notice of Agency Approval of a Proposed Rule."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: Karen Watson
Carrie Chambers

Questionnaire

DATE: September 1, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (AGENCY NAME, ADDRESS & PHONE NUMBER) Division of Environmental Protection
Office of Air Quality
7012 MacCorkle Avenue, SE
Charleston, WV 25304
Phone: (304) 926-3647

LEGISLATIVE RULE TITLE: 45CSR30 - "Requirements for Operating Permits"

1. Authorizing statute (s) citation: W.Va. Code §§ 22-5-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 12, 2000

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

I. Class I legal advertisement, *Charleston Daily Mail & Charleston Gazette*
II. Sent a copy of the Public Notice to our agency mailing list.
III. Public Notice placed on agency's Web site:
http://www.dep.state.wv.us/oaq/
IV. Press Release

c. Date of Public Hearing (s) or Public Comment Period ended:

Public Hearing -- August 14, 2000
Public Comment Period ended -- August 14, 2000

a. 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)

September 1, 2000

f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Edward L. Kropp, Chief	Carrie Chambers, Executive Assistant
7012 MacCorkle Ave., SE	10 McJunkin Road
Charleston, WV 25304	Nitro, WV 25143-2506
Phone: (304) 926-3647	(304) 759-0515
Fax: (304) 926-3637	(304) 759-0526
E-Mail: skropp@mail.dep.state.wv.us	Cchambers@mail.dep.state.wv.us

g. **IF DIFFERENT from item 'f',** please give Name, title, address and phone number (s) of agency person (s) who wrote and/or has responsibility for the contents of this rule: (Please type)

See "f" above

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 or comment period:

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

BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION

BRIEFING DOCUMENT

Rule Title: 45CSR30 - "Requirements for Operating Permits"

A. AUTHORITY: W.Va. Code §22-5-1 et seq.

B. SUMMARY OF RULE:

This rule establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act (CAA) and 40 CFR Part 70.

The operating permits program is directed toward major sources and sources as defined in the rule, and contains the following: requirements for permit applications; monitoring and reporting requirements; annual fees to cover all reasonable costs required to develop and administer the program; provisions for public participation; provisions to revise permits consistent with new standards; and operational flexibility within the permit provisions. These elements have been further refined and defined under the provisions of Title V and 40 CFR Part 70.

The purpose of revising the rule is to make various minor corrections and to correct deficiencies, as specified in 60 Federal Register 57352, November 15, 1995 (a copy of which is attached for informational purposes) and obtain full approval of the operating permits program by meeting all requirements of Title V and 40 CFR Part 70. In addition, the revisions will comport with recent federal regulations pursuant to section 112(g) of the CAA deleting the requirement to do a case-by-case technology-based standard for existing sources which modify their facilities.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The provisions of Title V of the CAA required that all states submit to U.S. Environmental Protection Agency (EPA) a comprehensive permit program (including effective regulations) on or before November 15, 1993. West Virginia submitted its operating permits program under 45CSR30 on November 12, 1993. On November 15, 1995, U.S. EPA granted the State interim approval of its operating permit program. To obtain full approval, the State must submit to U.S. EPA program revisions to correct all deficiencies that caused the operating permit program to receive interim approval. Such submittal must be made no later than 6 months prior to the expiration of interim approval,

or by June 1, 2001. (Interim approval expires on December 1, 2001). Failure to fully meet the requirements of 40 CFR Part 70 before expiration of the interim approval may result in sanctions pursuant to 42 U.S.C. 7509(b) and replacement of the State's operating permits program with a federal operating permits program pursuant to 40 CFR Part 71. Sanctions may include prohibitions on the approval by the Secretary of Transportation of any projects or grants (highway sanctions) and/or emissions offsets for new or modified sources of emissions units requiring at least a two (2) to one (1) offset. Along with revisions made to W. Va. Code §22-5-6 in 1999, the proposed revisions to this rule will ensure U.S. EPA's full approval of the State's operating permits program.

D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:

45CSR30 establishes a state operating permits program consistent with the federal Clean Air Act's Title V program and implementing regulations at 40 CFR Part 70. The rule is no more or less stringent than the counterpart federal regulations.

E. CONSTITUTIONAL TAKINGS DETERMINATION:

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its July 6, 2000 meeting, the Environmental Protection Advisory Council reviewed and discussed this rule. Their comments are contained in the attached minutes.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes. The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to

review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- **45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"**
- **45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"**
- **45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"**
- **45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"**
- **45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"**
- **45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"**
- **45CSR30 - "Requirements for Operating Permits"**
- **45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"**

In discussion of **45CSR1**, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large

industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPS. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that **45CSR15** adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to **45CSR16**, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being

shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also

proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% +) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

- **60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."**

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to **60CSR4**. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

- **199CSR1 - "Surface Mining Blasting Rule"**

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to

ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge, the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

- **35CSR4 - "Oil and Gas Wells and Other Wells"**

- **35CSR7 - "Certification of Gas Wells"**

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward. He said the proposed amendments in **35CSR4** will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the

paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Interval Revenue Code. Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- **33CSR3 - "Yard Waste Management Rule"**
- **33CSR5 - "Waste Tire Management Rule"**
- **33CSR20 - "Hazardous Waste Management Rule"**
- **33CSR32 - "Underground Storage Tank Insurance Fund"**

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on **33CSR3**. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under **33CSR5**. The

proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed **33CSR20**. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, **33CSR30**, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- **38CSR2 - "WV Surface Mining Reclamation Rule"**
- **38CSR3 - "Rules for Quarrying and Reclamation"**

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to **38CSR2**, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation, and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000

feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 45CSR30 - "Requirements for Operating Permits"

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Office of Air Quality

Address: 7012 MacCorkle Avenue, SE

Charleston, WV 25304-2943

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

2. Explanation of above estimates: The proposed revisions to 45CSR30 will have minimal effect on the costs to the Office of Air Quality. Costs incurred in the implementation of the rule will be covered under prior budget estimates for implementing Title V of the federal Clean Air Act (CAA).

3. Objectives of these rules: The purpose of revising the rule is to make various minor corrections and to correct deficiencies as specified in 60 Federal Register 57352 (November 15, 1995) and obtain full approval of the operating permits program by meeting all requirements of Title V and 40 CFR Part 70. In addition, the revisions will comport with recent federal regulations pursuant to section 112(g) of the CAA deleting the requirement to do a case-by-case technology-based standard for existing sources which modify their facilities.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

There will be no economic impact on political subdivisions or the regulated community in West Virginia resulting from the revisions contained herein.

C. Economic Impact on Citizens/Public at Large.

There will be no economic impact on the citizens or public at large in West Virginia resulting from the revisions contained herein.

Date: July 12, 2000

Signature of Agency Head or Authorized Representative

Joni J. Charles

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

SERIES 30
REQUIREMENTS FOR OPERATING PERMITS

§45-30-1. General.

1.1. Scope. -- This rule provides for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the Clean Air Act, and provides for a transition period prior to the implementation of the permitting system. All fees collected pursuant to this rule shall be expended solely to cover all reasonable direct and indirect costs required to administer the Title V operating permit program and accounted for in accordance with this rule.

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

1.3. Filing Date. -- ~~April 27, 1994.~~

1.4. Effective Date. -- ~~April 27, 1994.~~

1.5. Former Rules. -- This legislative rule amends 45CSR30 "Requirements for Operating Permits" which was filed April 27, 1994 and which became effective April 27, 1994.

§45-30-2. Definitions.

2.1. "Actual emissions" means, for the purpose of sections 7 and 8 of this rule, the actual total mass of regulated air pollutants, as defined in subsection 2.33 of this rule, emitted to the atmosphere during a particular calendar year and includes all routine as well as non-routine (e.g. abnormal or emergency operations) emissions.

2.2. "Affected source" means a source that includes one or more affected units under Title IV of the Clean Air Act (Acid Deposition Control).

2.3. "Affected states" are all States:

2.3.a. Whose air quality may be affected and that are contiguous to the State in which a Title V operating permit, permit modification or permit renewal is being proposed; or

2.3.b. That are within fifty (50) miles of the permitted source.

2.4. "Affected unit" means a fossil fuel-fired combustion device that is subject to emission reduction requirements or limitations under Title IV of the Clean Air Act (Acid Deposition Control).

2.5. "Air pollution", 'statutory air pollution' has the meaning ascribed to it in W. Va. Code §22-5-2.

2.6. "Applicable requirements" means all of the following as they apply to emissions units in a Title V source.

2.6.a. Any standard or other requirement provided for in the State Implementation Plan approved by U.S. EPA or promulgated by U. S. EPA through rulemaking under Title I of the Clean Air Act that implements the relevant requirements of the Act, including any revisions to that State Implementation Plan;

2.6.b. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Clean Air Act, including any permits issued under 45CSR13, 45CSR14, 45CSR15, and 45CSR19;

2.6.c. Any standard or other requirement under §111, including §111(d), of the Clean Air Act;

2.6.d. Any standard or other requirements under § 112 of the Clean Air Act, including any requirement concerning accident prevention under §112(r)(7) of the Clean Air Act, but not including the contents of any risk management plan required under §112(r) of the Clean Air Act;

2.6.e. Any standard or other requirement of the acid deposition control program under Title IV of the Clean Air Act or the regulations promulgated thereunder;

2.6.f. Any requirements established pursuant to §504(b) or §114(a)(3) of the Clean Air Act;

2.6.g. Any standard or other requirement governing solid waste incineration under §129 of the Clean Air Act;

2.6.h. Any standard or other requirement for consumer and commercial products under §183(e) of the Clean Air Act;

2.6.i. Any standard or other requirement for tank vessels under §183(f) of the Clean Air Act;

2.6.j. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless the Director determines that such requirements need not be contained in a Title V permit pursuant to an exemption by U.S. EPA;

2.6.k. Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Clean Air Act, but only as it would apply to temporary sources permitted pursuant to § 504(e) of the Clean Air Act;

2.6.l. Any emissions cap and related requirements established for the source by agreement with the Director and U.S. EPA or otherwise applicable under the rules of the Director; and

2.6.m. Any requirement imposed pursuant to the provisions of 45CSR4 and 45CSR27 and any other State-only requirement for State enforceable purposes only.

2.7. "Area source" means any non-major source subject to a standard or other requirement under ~~§ 111 or~~ § 112 of the Clean Air Act.

2.8. [RESERVED]

2.9. "Clean Air Act" ("CAA") means Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. §§ 7401-7671q, as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

2.10. [RESERVED]

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

2.12. "Director" means the ~~D~~director of the ~~D~~division of ~~E~~environmental ~~P~~protection or ~~his or her designated representative~~ such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.13. "Division of Environmental Protection" or "DEP" means ~~that Division of~~ the ~~D~~division of ~~E~~environmental ~~P~~protection as created by the provisions of W. Va. Code §22-1-1; et seq.

2.14. "Draft permit" means the version of a permit for which the Director offers public participation under subsection 6.8 or affected state review under subsection 7.2.

2.15. "Effective date of the operating permit program" means the date that U.S. EPA formally provides interim, partial, or full approval of the operating permit programs established under this rule.

2.16. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an

emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

2.17. "Emission point" means a stack, vent, process unit, or a definable area (such as an open materials storage yard) from which the emission of any air pollutant occurs.

2.18. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Clean Air Act. This term is not meant to alter or affect the definition of the term "affected unit" for purposes of Title IV of the Clean Air Act (Acid Deposition Control).

2.19. "Enforceable" means enforceable by the Director and U.S. EPA, unless specifically designated to mean otherwise.

2.20. "EPA" or "U. S. EPA" means the United States Environmental Protection Agency.

2.21. "Final permit" means the Title V operating permit issued pursuant to this rule that has completed all review procedures required under sections six and seven of this rule.

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

2.23. "General permit" means a Title V operating permit that meets the requirements of subsection 5.4 of this rule.

2.24. "Hazardous air pollutant" means any substance listed on table 45-30A.

2.25. "Case-by-case maximum achievable control technology" or "MACT" means an emissions limitation requiring the application of the maximum degree of reduction and control which the Director determines is achievable for each source or category of source which requires a case-by-case MACT determination pursuant to the provisions of subsections 12.1, 12.2, and 12.3 of this rule.

2.25.a. In the case of sources constructed or modified after the effective date of this rule, MACT shall not be less stringent than the most stringent emissions level that is achieved in practice by similar sources or processes.

2.25.b. For existing sources, MACT may be less stringent than MACT requirements for new or modified sources in the same category, but shall not be less stringent than the following:

2.25.b.1. For categories or subcategories with thirty (30) or more sources, the average emission limitation achieved by the best performing twelve (12) percent of the existing sources in the United States (for which the Director has or can reasonably obtain emission information). In making this determination the Director shall exclude sources that have achieved a level of emission rate or emission reduction equivalent to the lowest achievable emission rate (as defined in § 171 of the Clean Air Act) applicable to the source category and prevailing at the time; or

2.25.b.2. The average emission limitation achieved by the best performing five (5) sources in the United States (for which the Director has or could reasonably obtain emissions information) within a category or subcategory with fewer than thirty (30) sources in the United States.

2.25.c. For all facilities, MACT shall represent the maximum degree of emission reduction that the Director determines is achievable taking into consideration the cost of achieving such emission reduction, and public health and environmental impacts.

2.25.d. MACT measures shall include but not be limited to measures which:

2.25.d.1. Reduce or eliminate the emission rate of hazardous air pollutants through process changes or substitution of materials;

2.25.d.2. Enclose or seal equipment or systems to eliminate hazardous air pollutant emissions;

2.25.d.3. Collect, capture, destroy and/or otherwise treat hazardous air pollutants released from a process, stack storage, or fugitive emissions point;

2.25.d.4. Are work practice or operational methods; or

2.25.d.5. Are a combination of the above.

2.26. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in paragraphs 2.26.a, 2.26.b, or 2.26.c of this definition.

For the purpose of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, except that a research and development facility may be treated as a separate source from other stationary sources that are part of the same industrial grouping, are located on contiguous or adjacent property, and are under common control.

2.26.a. A major source under § 112 of the Clean Air Act, which is defined as:

2.26.a.1. For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to § 112(b) of the Clean Air Act or twenty-five (25) tpy or more of any combination of such hazardous air pollutants. See Table 45-30A for a listing of hazardous air pollutants regulated pursuant to this legislative rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

2.26.a.2. Radionuclides. In the event the Director obtains regulatory authority to implement federal requirements regarding radionuclides, the Director shall define "major source" consistent with the federal requirements.

2.26.b. A major stationary source of air pollutants, as defined in § 302 of the Clean Air Act, that directly emits or has the potential to emit, one hundred (100) tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule of the Director). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of § 302(j) of the Clean Air Act, unless the source belongs to one of the following categories of stationary sources:

2.26.b.1. Coal cleaning plants (with thermal dryers);

2.26.b.2. Kraft pulp mills;

2.26.b.3. Portland cement plants;

2.26.b.4. Primary zinc smelters;

2.26.b.5. Iron and steel mills;

2.26.b.6. Primary aluminum ore reduction plants;

2.26.b.7. Primary copper smelters;

2.26.b.8. Municipal incinerators (or combination thereof) capable of charging more than fifty (50) tons of refuse per day;

2.26.b.9. Hydrofluoric, sulfuric, or nitric acid plants;

2.26.b.10. Petroleum refineries;

2.26.b.11. Lime plants;

2.26.b.12. Phosphate rock processing plants;

2.26.b.13. Coke oven batteries;

2.26.b.14. Sulfur recovery plants;

2.26.b.15. Carbon black plants (furnace process);

2.26.b.16. Primary lead smelters;

2.26.b.17. Fuel conversion plants;

2.26.b.18. Sintering plants;

2.26.b.19. Secondary metal production plants;

2.26.b.20. Chemical process plants;

2.26.b.21. Fossil-fuel boilers (or combination thereof) totaling more than 150 million British thermal units per hour heat input;

2.26.b.22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

2.26.b.23. Taconite ore processing plants;

2.26.b.24. Glass fiber processing plants;

2.26.b.25. Charcoal production plants;

2.26.b.26. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

2.26.b.27. Ammonium sulfate manufacturing plants;

2.26.b.28. Asphalt concrete plants;

2.26.b.29. Asphalt processing/roofing manufacturing plants;

2.26.b.30. Bulk gasoline terminals;

2.26.b.31. Dry cleaning plants;

2.26.b.32. Glass manufacturing plants;

2.26.b.33. Grain elevators;

2.26.b.34. Graphic arts (rotogravure) plants;

2.26.b.35. Hazardous waste incineration facilities;

2.26.b.36. Lead-acid battery manufacturing plants;

2.26.b.37. Mineral processing plants;

2.26.b.38. Natural gas processing facilities;

2.26.b.39. Phosphate fertilizer production and storage facilities;

2.26.b.40. Rubber tire manufacturing plants;

2.26.b.41. Sewage treatment plants;

2.26.b.42. Synthetic fiber production plants;

2.26.b.43. Surface coating and printing operations; and

2.26.b.44. All other stationary source categories regulated by a standard promulgated under § 111 or § 112 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category.

2.26.c. A major stationary source as defined in part D of Title I of the Clean Air Act, including:

2.26.c.1. For ozone nonattainment areas, sources with the potential to emit one hundred (100) tons or more per year of volatile organic compounds (VOCs) or oxides of nitrogen (NO_x) in areas classified as "marginal" or "moderate," fifty (50) tons or more per year in areas classified as "serious," twenty-five (25) tons or more per year in areas classified as "severe," and ten (10) tons or more per year in areas classified as "extreme"; except that the references in this clause to one hundred (100), fifty (50), twenty-five (25), and ten (10) tons per year of nitrogen oxides shall not apply with respect to any source for which U.S. EPA has made a finding, under section § 181(f)(1) or (2) of the Clean Air Act, that requirements under section § 181(f) of the Clean Air Act do not apply;

2.26.c.2. For ozone transport regions established pursuant to § 184 of the Clean Air Act, sources with the potential to emit fifty (50) tons or more per year of volatile organic compounds (VOCs);

2.26.c.3. For carbon monoxide ("CO") nonattainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty (50) tons or more per year of carbon monoxide;

2.26.c.4. For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit seventy (70) tons or more per year of PM10.

2.27. "Permit" means any permit or group of permits covering a source or sources of emissions that are issued, renewed, amended, or revised pursuant to this rule.

2.28. "Permit modification" means a revision to a Title V operating permit issued under this legislative rule that meets the requirements of subsection 6.5 of this rule.

2.29. "Permit revision" means any permit modification or administrative permit amendment.

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

2.31. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air 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 if the limitation is enforceable. This term does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term "capacity factor" as used in Title IV of the Clean Air Act (Acid Deposition Control) or the regulations promulgated thereunder.

2.32. "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to U.S. EPA for review in compliance with section seven of this rule.

2.33. "Regulated air pollutant" means the following:

2.33.a. Nitrogen oxides (NO_x), any volatile organic compound, or particulate matter;

2.33.b. Any pollutant for which a national ambient air quality standard has been promulgated;

2.33.c. Any pollutant that is subject to any standard promulgated under § 111 of the Clean Air Act;

2.33.d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act (§ 602). (See Table 45-30B for a listing of Class I and II substances regulated pursuant to this rule.);

2.33.e. Any pollutant subject to a standard or other requirement under § 112 of the Clean Air Act, including sections § 112(g), (j), and (r), including the following:

2.33.e.1. Any pollutant subject to requirements under § 112(j) of the Clean Air Act. If the U.S. EPA fails to promulgate a standard by the date established pursuant to section § 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to § 112(e) of the Clean Air Act.

2.33.e.2. Any pollutant for which the requirements of section § 112(g)(2) of the Clean Air Act have been met, but only with respect to the individual source subject to that § 112(g)(2) requirement.

2.33.f. Any other pollutant regulated by the State under an emission standard or ambient air quality standard.

2.34. "Regulated pollutant (for fee calculation)," which is used only for purposes of section eight of this rule, means any "regulated air pollutant" except the following:

2.34.a. Carbon monoxide provided that emissions of carbon monoxide do not fall under the provisions of subparagraph 2.26.c.3;

2.34.b. Any Class I or II substance which is a regulated air pollutant solely because it is listed pursuant to § 602 of the Clean Air Act (See Table 45-30B for a listing of Class I and Class II substances);

2.34.c. Any pollutant that is a regulated air pollutant only because it is subject to a standard or regulation under § 112(r) of the Clean Air Act; or

2.34.d. Any pollutant that is a regulated pollutant solely because it is listed in 45CSR27.

2.35. "Relocation" means the physical movement of a source outside its existing plant boundaries.

2.36. "Renewal" means the process by which a permit is reissued at the end of its term.

2.37. "Research and development facility" means sources whose activities are conducted for nonprofit scientific or educational purposes; sources whose activities are conducted to test more efficient production processes or methods for preventing or reducing adverse environmental impacts, provided that the activities do not include the production of an intermediate or final product for sale or exchange for commercial profit; a research or laboratory facility the primary purpose of which is to conduct research and development into new processes and products, that is operated under the close supervision of technically trained personnel, and that is not engaged in the manufacture of products for sale or exchange for commercial profit; or the experimental firing of any fuel or combination of fuels in a boiler, heater, furnace, or dryer for the purpose of conducting research and development of more efficient combustion or more effective prevention or control of air pollutant emissions, provided that the heat generated is not used for production purposes or for producing a product for sale or exchange for commercial profit.

2.38. "Responsible official" means one of the following:

2.38.a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual

sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or (ii) the delegation of authority to such representative is approved in advance by the Director;

2.38.b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

2.38.c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this ~~part~~rule, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of U.S. EPA); or

2.38.d. For affected sources:

2.38.d.1. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act (Acid Deposition Control) or the regulations promulgated thereunder are concerned; and

2.38.d.2. The designated representative for any other purposes under this legislative rule.

2.39. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

2.40. "Source" or "Stationary source" means, for the purpose of this rule, any building, structure, facility, or installation that emits or may emit any air pollutant.

2.41. "Source-specific permit" means a single Title V operating permit addressing all of the relevant emission units and operations which are subject to applicable requirements at a particular source or major source.

2.42. "Title V operating permit" means a permit issued under the provisions of this rule.

2.43. "Title V source" means a source required to obtain a Title V operating permit.

2.44. "Volatile organic compound" (VOC) means any organic compound that participates in atmospheric photochemical reactions. This includes any organic compound other than the following exempt compounds: methane, ethane, methyl chloroform (1,1,1-trichloroethane), CFC-113 (trichlorotrifluoroethane), methylene chloride, CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), CFC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentaflouroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-141b (dichlorofluoroethane), HCFC-142b (chlorodifluoroethane), HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane), HFC-125 (pentafluoroethane, HFC-134 (1,1,2,2-tetrafluoroethane), HFC-143a (1,1,1-trifluoroethane), HFC-152a (1,1-difluoroethane), and perfluorocarbon compounds which fall into these classes:

2.44.a. Cyclic, branched, or linear, completely fluorinated alkanes;

2.44.b. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

2.44.c. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or

2.44.d. Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Other words and phrases used in this rule, unless otherwise indicated, have the meaning ascribed to them in W. Va. Code §22-5-1; et seq., and rules of the Director.

§45-30-3. Permits.

3.1. Permit requirement.

3.1.a. On and after the effective date of the operating permit program, no person shall violate any requirement of a permit issued under this rule nor shall any person operate any of the following sources, except in compliance with a permit issued under this rule:

3.1.a.1. Any major source;

3.1.a.2. Any source, including an area source, subject to a standard or other requirements promulgated under § 111 of the Clean Air Act;

3.1.a.3. Any source, including an area source, subject to a standard or other requirements under § 112 of the Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under § 112(r) of the Clean Air Act;

3.1.a.4. Any affected source; and

3.1.b. If, on the effective date of the operating permit program, a source is not subject to enforceable emissions limitations or such other enforceable measures that require the continued operation and maintenance of air pollution control equipment and/or other operational limitations that make the source non-major, the source shall be treated as a major source subject to the requirements of this rule.

3.2. Exemptions and Deferrals.

3.2.a. Except as provided in section four, all sources listed in subsection 3.1 of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to § 129(e) of the Clean Air Act may be deferred by the Director on a specific source category basis from the obligation to obtain a Title V operating permit under this rule. Any such deferral by the Director shall be consistent with the timetable established by U.S.EPA for non-major sources to which this rule applies except as provided under subsection 4.1.a.

3.2.b. Any source listed in paragraph 3.2.a of this subsection, deferred from the requirement to obtain a permit under this section, may opt to apply for a permit under this rule.

3.2.c. Unless otherwise required by this rule to have a Title V operating permit, the following source categories are exempted from the obligation to obtain a Title V operating permit:

3.2.c.1. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. 60, subpart AAA (1988) - Standards of Performance for New Residential Wood Heaters; and

3.2.c.2. All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. 61, subpart M (1984) - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation.

3.2.d. As provided in this subdivision, the following ~~Insignificant emission~~ units or activities within a stationary source subject to this rule ~~which require only identification within the required permit application are as follows~~ may be deemed to be insignificant:

3.2.d.1. Flares used solely to indicate danger to the public.

3.2.d.2. Combustion units designed and used exclusively for comfort heating that used liquid petroleum gas or natural gas as fuel.

3.2.d.3. Comfort air conditioning or ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

3.2.d.4. Indoor or outdoor kerosene heaters.

3.2.d.5. Space heaters operating by direct heat transfer.

3.2.d.6. Repairs or maintenance where no structural repairs are made and where no new air pollutant emitting facilities are installed or modified.

3.2.d.7. Air contaminant detectors or recorders, combustion controllers or shutoffs.

3.2.d.8. Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.

3.2.d.9. Any consumer product used in the same manner as in normal consumer use, provided the use results in a duration and frequency of exposure which are not greater than those experienced by consumers, and which may include, but not be limited to, personal use items; janitorial cleaning supplies, office supplies and supplies to maintain copying equipment.

3.2.d.10. Equipment on the premises of industrial and manufacturing operations used solely for the purpose of preparing food for human consumption.

3.2.d.11. Portable generators.

3.2.d.12. Firefighting equipment and the equipment used to train firefighters.

3.2.d.13. Such other sources or activities as the Director may determine with EPA approval.

3.2.e. Potential emissions from these units or activities listed under subdivision 3.2.d. shall ~~may~~ not be excluded in the determination as to whether a stationary source is a major source for the purpose of determining applicability of this rule~~;~~; nor shall units subject to applicable requirements be deemed to be insignificant emission units. Units or activities deemed insignificant shall be identified in the permit application, and the owner or operator shall upon request provide sufficient information for the Director to verify that such units or activities are insignificant, provided that for all units or activities deemed insignificant because of their size, production rate or amount of pollutant emitted, or for which applicable requirements may apply, the owner or operator shall provide information sufficient for the Director to verify that the unit or activity is insignificant at the time the permit application is submitted.

3.3. Emission units and sources.

3.3.a. For major sources, the Director shall include in the permit all applicable requirements for all emission units ~~other than insignificant emission units~~ in the major source subject to this rule.

3.3.b. For any non-major source subject to this rule, the Director shall include in the permit all applicable requirements for emission units that cause the source to be subject to this rule.

3.4. Fugitive emissions. Fugitive emissions from a source subject to this rule shall be included in the permit application and all operating permits issued under this rule in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

§45-30-4. Application for Permits.

4.1. Duty to apply. For each source, the owner or operator shall submit a timely and complete permit application in accordance with this section.

4.1.a. Timely application.

4.1.a.1. Except as otherwise provided, applications for permits for sources which are in existence on the effective date of the operating permit program shall be submitted in accordance with the following schedule:

4.1.a.1.A. Applications for coal preparation plants as defined in 40 C.F.R. 60.250 and 251, whether major or minor sources, which are subject to performance standards under 40 C.F.R. 60, subpart Y, and all other coal preparation plants which are major sources shall be submitted to the Director within ninety (90) days of the effective date of the operating permit program.

4.1.a.1.B. Applications for natural gas processing plants or natural gas pipeline compressor engines subject to this rule shall be submitted to the Director within ninety (90) days of the effective date of the operating permit program.

4.1.a.1.C. Applications for all hot mix asphalt plants subject to the requirements of 40 C.F.R. 60 subpart I including area sources and all hot mix asphalt plants which are major sources shall be submitted to the Director within ninety (90) days of the effective date of the operating permit program.

4.1.a.1.D. Applications for glass manufacturing plants subject to this rule including area sources subject to 40 C.F.R. 60 subpart CC shall be submitted to the Director within one hundred eighty (180) days of the effective date of the operating permit program.

4.1.a.1.E. Applications for chemical manufacturing plants or any other stationary sources subject to the requirement of this rule which contain fewer than 100 emission points shall be submitted within one hundred eighty (180) days of the effective date of the operating permit program.

4.1.a.1.F. Application for all other stationary sources subject to this rule shall be submitted to the Director within twelve (12) months of the effective date of the operating permit program.

4.1.a.2. Sources required to meet requirements under § 112(g) of the Clean Air Act, or to have a permit under the preconstruction review program approved into the State Implementation Plan under part C or D of Title I of the Clean Air Act, including 45CSR14 and 45CSR19, or any other source which becomes subject to this rule after the effective date of the operating permit program shall file a complete application to obtain the Title V operating permit or permit revision within twelve (12) months after commencing operation. ~~(~~Where an existing Title V operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation or the source may apply for a single permit in accordance with all applicable provisions and procedures of this rule and all applicable preconstruction permitting rules.

4.1.a.3. A permit renewal application is timely if it is submitted at least six (6) months prior to the date of permit expiration.

4.1.a.4. Applications for initial Phase II (as defined in Title IV of the Clean Air Act) acid deposition control permits shall be submitted to the Director by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for NO_x.

4.1.a.5. Within eighteen (18) months following the date established by U.S. EPA's failure to timely promulgate a standard in accordance with the requirements of § 112(e) of the Clean Air Act, the owner or operator of a major source subject to this paragraph shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this section, any failure to have a permit shall not be a violation of the requirements of this rule, unless the delay in final action is due to the failure of the applicant to timely submit information required or requested by the Director to process the application on forms to be made available by the Director.

4.1.b. Complete application. To be deemed complete, an application must provide all information required pursuant to subsection 4.3, except that applications for permit revision need supply such information only if it is related to the proposed change. Information required under subsection 4.3 must be sufficient for the Director to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information consistent with subsection 4.4 in this section. Unless the Director determines that an application is not complete within sixty (60) days of receipt of the application, such application shall be deemed to be complete, except in the case of minor permit modifications made pursuant to subsection 6.5 of this rule. Any application which

is timely submitted and subsequently determined to be complete within the initial sixty (60) day completeness review period by the Director shall be deemed to be complete on the date that it was filed. If, during processing an application that has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, the Director may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subsection 6.2 of this rule, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Director.

4.1.c. Confidential information. In the case where a source has submitted information to the State under a claim of confidentiality pursuant to W. Va. Code §22-5-10 and 45CSR31, the Director may also require the source to submit a copy of such information directly to the U.S. EPA.

4.2. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

4.3. Standard application form and required information. The Director shall provide for a standard application form or forms. Information, as described below, for each emissions unit at a source which is not insignificant as defined in section 3.2.d, shall be included in the application, except that a list of insignificant activities or emission units must be included in the application. An application shall contain all information necessary to determine the applicability of, or to impose, any applicable requirement, and to evaluate the fee amount required under section eight of this rule. The application forms shall include, but not be limited to, the elements specified below:

4.3.a. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

4.3.b. A description of the source's processes and products (by Standard Industrial Classification Code) including any processes and products associated with each alternate scenario identified by the source.

4.3.c. The following emission-related information:

4.3.c.1. All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units qualify as insignificant emission units as defined in ~~subsection~~ subdivision 3.2.d of this rule or are exempted under subsection 3.1 of this rule. In the case of insignificant emission units or activities defined under subdivision 3.2.d., an applicant shall provide information regarding emissions to the extent required under subdivision 3.2.e. The Director shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to section eight of this rule.

4.3.c.2. Identification and description of all points of emissions described in paragraph 4.3.c.1 in sufficient detail to establish the basis for fees and applicability of requirements of this rule, W. Va. Code §22-5-1 et seq., and the Clean Air Act.

4.3.c.3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4.3.c.4. The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

4.3.c.5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

4.3.c.6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the source.

4.3.c.7. Other information required by any applicable requirements (including information related to stack height limitations developed pursuant to §123 of the Clean Air Act and 45CSR20, "Good Engineering Practices as Applicable to Stack Heights"), such as the location of emissions units, flow rates, building dimensions, and stack parameters (including height, diameter, and plume temperature) for all regulated pollutants.

4.3.c.8. Calculations or test data on which the information in paragraphs 4.3.c.1 through 4.3.c.7. above is based.

4.3.d. The following air pollution control requirements:

4.3.d.1. Citation and description of all applicable requirements;

4.3.d.2. Description of or reference to any applicable test method for determining compliance with each applicable requirement; and

4.3.d.3. A list of all effective air quality-related permits and orders and a list of all such permit applications which are pending action by the Director or U.S. EPA.

4.3.e. Other specific information that may be necessary to implement and enforce other requirements of the W. Va. Code §22-5-1, et seq. and §22-18-1, et seq. or the Clean Air Act or to determine the applicability of such requirements.

4.3.f. An explanation of any proposed exemptions from otherwise applicable requirements.

4.3.g. Additional information as determined to be necessary by the Director to define emissions trading scenarios pursuant to subdivision 5.1.j, alternative operating scenarios identified by the source pursuant to subdivision 5.1.i, operational flexibility pursuant to subsection 5.8, and alternative equivalent emission limits pursuant to paragraph 5.1.a.3.

4.3.h. A compliance plan for all sources that contains all the following:

4.3.h.1. A description of the compliance status of the source and a schedule for compliance by the source with respect to all applicable requirements, as follows:

4.3.h.1.A. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

4.3.h.1.B. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

4.3.h.1.C. A schedule of compliance, including a narrative description of how the source will achieve compliance, for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of

compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

4.3.h.2. A schedule for submission of certified progress reports where applicable no less frequently than every six (6) months. For sources required to have a schedule of compliance to remedy a violation, a more frequent period no greater than once a month as specified by the Director.

4.3.h.3. The compliance plan content requirements specified in this paragraph shall apply and be included in the acid deposition control portion of a compliance plan for an affected source except as specifically superseded by rules promulgated by the Director with regard to Title IV of the Clean Air Act (Acid Deposition Control).

4.3.i. Requirements for compliance certification, including the following:

4.3.i.1. A certification of compliance with all applicable requirements by a responsible official consistent with subsection 4.4 of this section and § 114(a)(3) of the Clean Air Act;

4.3.i.2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

4.3.i.3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Director; and

4.3.i.4. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Clean Air Act and the rules of the Director.

4.3.j. The use, where applicable, of nationally standardized forms for Title IV of the Clean Air Act (Acid Deposition Control) portions of permit applications and compliance plans.

4.4. Any application form, report, or compliance certification submitted pursuant to this legislative rule shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this rule shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§45-30-5. Permit Content.

5.1. Standard permit requirements. Each Title V operating permit issued under this legislative rule shall include all applicable requirements that apply to the source at the time of permit issuance and the following elements:

5.1.a. Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

5.1.a.1. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

5.1.a.2. The permit shall state that, where applicable requirements of the Clean Air Act are more stringent than any applicable requirement of regulations promulgated under Title IV of the Clean Air Act (Acid Deposition Control), both provisions shall be incorporated into the permit and shall be enforceable by the Director and U.S. EPA.

5.1.a.3. If the rules promulgated by the Director pursuant to provisions of Title I of the Clean Air Act and contained in the State Implementation Plan allow a determination of an alternative equivalent emission limit at a source to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be

quantifiable, accountable, enforceable, and based on replicable procedures.

5.1.b. Permit duration. The Director shall issue permits for a fixed term of five (5) years for all sources regulated pursuant to this rule.

5.1.c. Monitoring and related recordkeeping and reporting requirements:

5.1.c.1. Each permit shall contain the following requirements with respect to monitoring:

5.1.c.1.A. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the Clean Air Act;

5.1.c.1.B. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the source's compliance with the permit, as reported pursuant to 5.1.c.3 of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subparagraph (5.1.c.1); and

5.1.c.1.C. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

5.1.c.2. With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require the following:

5.1.c.2.A. Records of monitoring information that include the following:

5.1.c.2.A.1. The date, place as defined in the permit, and time of sampling or measurements.

5.1.c.2.A.2. The date(s) analyses were performed.

5.1.c.2.A.3. The company or entity that performed the analyses.

5.1.c.2.A.4. The analytical techniques or methods used.

5.1.c.2.A.5. The results of such analyses.

5.1.c.2.A.6. The operating conditions existing at the time of sampling or measurement.

5.1.c.2.B. Retention of records of all required monitoring data and support information for a period of at least five (5) years from the date of monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. Where appropriate, the permit may allow records to be maintained in computerized form in lieu of the above records.

5.1.c.3. With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

5.1.c.3.A. Submittal of reports of any required monitoring at least every six (6) months, but no more often than once per month. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with paragraph 4.4 of this rule. To the extent practicable, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittees' compliance certifications.

5.1.c.3.B. Reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken in accordance with any rules of the Director.

5.1.c.3.C. In addition to monitoring reports required by the permit, supplemental reports and notices are deemed to be prompt if submitted in the following fashion:

5.1.c.3.C.1. Any deviation resulting from an emergency or upset condition, as defined in subsection 5.7, shall be reported by telephone or telefax within one (1) working day of the date on which the permittee becomes aware of the deviation, if the permittee desires to assert the affirmative defense authorized by subsection 5.7. A written report of such deviation, which shall include the probable cause of such deviations, and any corrective actions or preventive measures taken, shall be submitted and certified by a responsible official within ten (10) days of the deviation.

5.1.c.3.C.2. Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported to the Director immediately by telephone or telefax. A written report of such deviation, which shall include the probable cause of such deviation, and any corrective actions or preventive measures taken, shall be submitted by a responsible official within ten (10) days of the deviation.

5.1.c.3.C.3. Any other deviation that is identified in the permit as requiring more frequent reporting than the permittee's reports of required monitoring shall be reported on the schedule specified in the permit.

5.1.c.3.C.4. All reports of deviations shall identify the probable cause of the deviation and any corrective actions or preventative measures taken.

5.1.c.3.D. Every report submitted under this subsection shall be certified by a responsible official.

5.1.c.3.E. A permittee may request confidential treatment for information submitted under this subsection pursuant to the limitations and procedures of W. Va. Code 22-5-10 and 45CSR31.

5.1.d. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act (Acid Deposition Control) or rules of the Director promulgated thereunder.

5.1.d.1. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid deposition control program, provided that such increases do not require a permit revision under any other applicable requirement.

5.1.d.2. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

5.1.d.3. Any such allowance shall be accounted for according to the procedures established in rules promulgated under Title IV of the Clean Air Act.

5.1.e. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.

5.1.f. Provisions stating the following:

5.1.f.1. Duty to comply. The permittee must comply with all conditions of the Title V operating permit. Any permit noncompliance constitutes a violation of the Code of West Virginia and Clean Air Act and is grounds for enforcement action by the Director or U.S. EPA; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

5.1.f.2. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. However, nothing in this paragraph shall be construed as precluding consideration of a need to halt or reduce activity as a mitigating factor in determining penalties for noncompliance if the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continued operations.

5.1.f.3. Permit actions. The permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5.1.f.4. Property rights. The permit does not convey any property rights of any sort, nor any exclusive privilege.

5.1.f.5. Duty to provide information. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish such records to the Director and directly to U.S. EPA along with their claim of confidentiality.

5.1.g. Fees. A provision to ensure that a source pays fees to the permitting agency consistent with section eight of this rule.

5.1.h. Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit and that are in accordance with all applicable requirements.

5.1.i. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and which are approved by the Director. Such terms and conditions:

5.1.i.1. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating and to document the change in reports submitted pursuant to the terms of the permit and this rule.

5.1.i.2. Shall extend the permit shield described in subsection 5.6 of this section to all terms and conditions under each such operating scenario; and

5.1.i.3. Shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this rule.

5.1.j. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

5.1.j.1. Shall include all terms required under subsection 5.1 and 5.3 of this to determine compliance;

5.1.j.2. Shall extend the permit shield described in subsection 5.6 to all terms and conditions that allow such increases and decreases in emissions; and

5.1.j.3. Shall meet all applicable requirements and requirements of this ~~part.~~ rule.

~~5.1.j.4. May include categories of VOCs which in the Director's discretion can be substituted for one another in a production process.~~

5.2. Federally-enforceable requirements.

5.2.a. All terms and conditions in a permit issued pursuant to this rule, including any provisions designed to limit a source's potential to emit and excepting those provisions that are specifically designated in the permit as "State-enforceable only", are enforceable by the Director, U.S. EPA, and citizens under the Clean Air Act.

5.2.b. Notwithstanding paragraph 5.2.a, the Director shall specifically designate as not being federally enforceable under the Clean Air Act any terms and conditions included in the permit that are not required under the Clean Air Act nor under any of its applicable requirements. Terms and conditions of permits issued under this rule which are state enforceable only are not subject to the requirements of section seven nor shall they be subject to objection, requests for permit reopening, or enforcement by U.S. EPA. Permit revisions and reopenings for state only requirements shall be accomplished by using the procedures of section six of this rule, except that such revisions are not subject to U.S. EPA or affected state review.

5.3. Compliance requirements. All Title V operating permits shall contain the following elements with respect to compliance:

5.3.a. Consistent with paragraph 5.1.c of this section: compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a Title V operating permit shall contain a certification by a responsible official that meets the requirements of subsection 4.4 of this rule.

5.3.b. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Director or an authorized designee of the Director to perform the following:

5.3.b.1. At all reasonable times (including all times in which the facility is in operation) enter upon the permittee's premises where a source is located or emissions related activity is conducted, or where records must be kept under the conditions of the permit;

5.3.b.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

5.3.b.3. Inspect at reasonable times (including all times in which the facility is in operation) any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

5.3.b.4. Sample or monitor at reasonable times substances or parameters to determine compliance with the permit or applicable requirements or ascertain the amounts and types of pollutants discharged.

5.3.c. A schedule of compliance consistent with paragraph 4.3.h of this rule.

5.3.d. Progress reports consistent with an applicable schedule of compliance and paragraph 4.3.h of this rule to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Director. Such progress reports shall contain the following:

5.3.d.1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

5.3.d.2. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5.3.e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

5.3.e.1. The frequency (not less than annually or a more frequent period as specified in the applicable requirement or by the Director) of submissions of compliance certifications;

5.3.e.2. In accordance with paragraph 5.1.c, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices;

5.3.e.3. A requirement that the compliance certification include the following:

5.3.e.3.A. The identification of each term or condition of the permit that is the basis of the certification;

5.3.e.3.B. The permittee's compliance status as shown by test or monitoring data, records, and other information reasonably available to the permittee;

5.3.e.3.C. Whether compliance was continuous or intermittent;

5.3.e.3.D. The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with section 5.1 of this rule; and

5.3.e.3.E. Such other facts as the Director may require to determine the compliance status of the source;

5.3.e.4. A requirement that all compliance certifications be submitted to U.S. EPA as well as to the Director; and

5.3.f. Such other provisions as the Director may require to determine the compliance status of the source.

5.4. General permits.

5.4.a. The Director may, after notice and opportunity for public participation as contained in section six of this rule, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other Title V operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Director shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of subsection 5.6 of this section, the source shall be subject to enforcement action for operation without a Title V operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under Title IV of the Clean Air Act (Acid Deposition Control) unless otherwise provided in rules promulgated by the Director in accordance with that Title IV of the Clean Air Act.

5.4.b. A general permit may be issued for the following purposes:

5.4.b.1. To establish terms and conditions to implement applicable requirements for a source category;

5.4.b.2. To establish terms and conditions to implement applicable requirements for specified categories of changes to permitted sources;

5.4.b.3. To establish terms and conditions for new requirements that apply to sources with existing permits; and

5.4.b.4. To establish enforceable caps on emissions from sources in a specified category.

5.4.c. Sources that would qualify for a general permit must apply to the Director for coverage under the terms of the general permit or must apply for a Title V operating permit consistent with section four of this rule. The Director may, in the general permit, provide for applications which deviate from the requirements of section four, provided that such applications meet the requirements of Title V of the Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The Director may grant a request for a source to operate under a general permit without repeating the public participation

procedures as required by subsection 6.8, and such grant shall not be a final permit action for judicial review.

5.4.d. The Director shall act within ninety (90) days to approve or deny a request to be covered under a general permit.

5.4.e. A source may apply for coverage under a general permit for some emissions units or activities even if the source must file a source-specific permit application for other emissions units or activities. In the event that both a general permit and a source-specific permit are granted to the same source, the source-specific permit shall incorporate the applicable general permit(s).

5.4.e.1. In the event that a source is issued a general permit for one or more emissions units at a source, any subsequent application for a source-specific permit shall include the source subject to the general permit. The incorporation of the general permit into the source-specific application shall subject the general permit source to all procedures and processes, including public comment, to which the entire application and permit process are subject. The terms and duration of any general permit incorporated under a source-specific permit shall be void upon the issuance of such source-specific permit and the terms and duration of such source-specific permit shall then control.

5.4.e.2. In the event that a source obtains a general permit subsequent to the issuance of a source-specific permit, such general permit shall be applicable only for the remainder of the term of the source-specific permit. The general permit source shall be included in the renewal application for the source specific permit and subject to all procedures and processes, including public comment, to which the renewal is subject.

5.5. Temporary sources. The Director may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. Temporary sources must comply with preconstruction review requirements under 45CSR13, 45CSR14, 45CSR15, and 45CSR19. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include provisions that will assure compliance with all applicable requirements at all authorized locations. The owner or operator shall notify the Director at least ten (10) days in advance of each change in location.

5.6. Permit shield.

5.6.a. Except as otherwise provided in this rule, the Director shall include in a Title V operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

5.6.a.1. Such applicable requirements are included and are specifically identified in the permit; or

5.6.a.2. The Director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes such a determination or a concise summary thereof.

5.6.b. A Title V operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

5.6.c. Nothing in this subsection or in any Title V operating permit shall alter or affect the following:

5.6.c.1. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; or

5.6.c.2. The applicable requirements of the Code of West Virginia and Title IV of the Clean Air Act (Acid Deposition Control), consistent with § 408(a) of the Clean Air Act.

5.6.c.3. The authority of the Administrator of U.S. EPA to require information

under § 114 of the Clean Air Act or to issue emergency orders under § 303 of the Clean Air Act.

5.7. Emergency provision.

5.7.a. Definition. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

5.7.b. Effect of any emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 5.7.c of this subsection are met.

5.7.c. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

5.7.c.1. An emergency occurred and that the permittee can identify the cause(s) of the emergency;

5.7.c.2. The permitted facility was at the time being properly operated;

5.7.c.3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

5.7.c.4. Subject to the requirements of part 5.1.c.3.C.1, the permittee submitted notice of the emergency to the Director within one (1) working day of the time when emission limitations were exceeded due to the emergency and made a request for variance, and as applicable rules provide. This notice, report, and variance request fulfills the requirement of subparagraph 5.1.c.3.B of this rule. This notice must contain a detailed description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

5.7.d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

5.7.e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

5.8. Operational flexibility. Each permit issued under this rule shall provide that a permittee may make changes within the facility, as provided by § 502(b)(10) of the Clean Air Act. Such operational flexibility shall be provided in the permit in conformance with the permit application and applicable requirements. No such changes shall be a modification under any rule any provision of Title I of the Clean Air Act (including 45CSR14 and 45CSR19) promulgated by the Director in accordance with Title I of the Clean Air Act and the change shall not result in a level of emissions exceeding the emissions allowable under the permit.

5.8.a. Before making a change under this provision, the permittee shall provide advance written notice to the Director and to U.S. EPA, describing the change to be made, the date on which the change will occur, any changes in emissions, and any permit terms and conditions that are affected. The permittee shall thereafter maintain a copy of the notice with the permit, and the Director shall place a copy with the permit in the public file. The written notice shall be provided to the Director and U.S. EPA at least seven (7) days prior to the date that the change is to be made, except that this period may be shortened or eliminated as necessary for a change that must be implemented more quickly to address unanticipated conditions posing a significant health, safety, or environmental hazard. If less than seven (7) days notice is provided because of a need to respond more quickly to such unanticipated conditions, the permittee shall provide notice to the Director and U.S. EPA as

soon as possible after learning of the need to make the change.

5.8.b. A permitted source may trade increases and decreases in emissions within the facility, where rules promulgated by the Director pursuant to provisions of Title I of the Clean Air Act and which are contained in the State Implementation Plan for West Virginia provide for such emissions trades without a permit modification. In such a case, the advance written notice provided by the permittee shall identify the applicable requirements allowing trading and shall state when the change will occur, the types and quantities of emissions to be traded, the permit terms or other applicable requirements with which the source will comply through emissions trading, and such other information as may be required by the Director.

5.8.c. The permit shield provided under subsection 5.6 shall not apply to changes made under this section except those provided for in paragraph 5.8.d. However, the protection of the permit shield will continue to apply to operations and emissions that are not affected by the change, provided that the permittee complies with the terms and conditions of the permit applicable to such operations and emissions. The permit shield may be reinstated for emissions and operations affected by the change:

5.8.c.1. If subsequent changes cause the facility's operations and emissions to revert to those authorized in the permit and the permittee resumes compliance with the terms and conditions of the permit, or

5.8.c.2. If the permittee obtains final approval of a significant modification to the permit to incorporate the change in the permit.

5.8.d. Upon the request of a permit applicant, the Director may issue a permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that assure that the emissions trades are quantifiable, accountable, enforceable, and replicable, and comply with all applicable requirements and paragraph 5.1.j of this rule. The permit shield under subsection 5.6 shall apply to permit terms and conditions authorizing such increases and decreases in emissions. The written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

5.9. Off-permit changes. Except as provided in paragraph 5.9.e below, a facility may make any change in its operations or emissions that is not addressed nor prohibited in its permit and which is not considered to be construction nor modification under any rule promulgated by the Director without obtaining an amendment or modification of its permit. Such changes shall be subject to the following requirements and restrictions:

5.9.a. The change must meet all applicable requirements and may not violate any existing permit term or condition.

5.9.b. The permittee must provide a written notice of the change to the Director and to U.S. EPA within two (2) business days following the date of the change. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

5.9.c. The change shall not qualify for the permit shield.

5.9.d. The permittee shall keep records describing all changes made at the source that result in emissions of regulated air pollutants, but not otherwise regulated under the permit, and the emissions resulting from those changes.

5.9.e. No permittee may make any change subject to any requirement under Title IV of the Clean Air Act (Acid Deposition Control) pursuant to the provisions of this subsection.

5.9.f. No permittee may make any changes which would require preconstruction ~~reivew~~ review under any provision of Title I of the Clean Air Act (including 45CSR14 and 45CSR19) pursuant to the provisions of this section.

§45-30-6. Permit Issuance, Renewal, Reopenings, and Revisions.

6.1. Action on application.

6.1.a. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

6.1.a.1. The Director has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subsection 5.4 of this rule;

6.1.a.2. Except for modifications qualifying for minor permit modification procedures under paragraph 6.5.a, the Director has complied with the public participation procedures for permit issuance specified under subsection 6.8 of this section;

6.1.a.3. The Director has complied with the requirements for notifying and responding to affected States as required by subsection 7.2 of this rule;

6.1.a.4. The conditions of the permit provide for compliance with all applicable requirements and the requirements of this rule; and

6.1.a.5. The Director has provided a copy of the permit and any notices required under subsections 7.1 and 7.2 of this rule to U.S. EPA, and U.S. EPA has not objected to issuance of the permit under subsection 7.3 of this rule within the time period specified therein.

6.1.b. Except as provided under the initial transition plan provided for under section nine of this rule and as may be required by rules of the Director pursuant to Title IV of the Clean Air Act (Acid Deposition Control), the Director shall take final action on each permit application within twelve (12) months after the application is deemed complete.

6.1.c. Priority shall be given to taking action on applications for construction or modification under 45CSR13, 45CSR14, 45CSR15, or 45CSR19.

6.1.d. The Director shall promptly provide notice of the completeness to the applicant. Unless the Director requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. No completeness determination need be made for minor permit modification applications pursuant to 6.5.a.

6.1.e. Following receipt and review of an application, the Director shall issue a draft permit, permit modification or renewal for public comment. In accordance with subsection 6.9, the Director shall develop a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Director shall send this statement to the U.S. EPA and to any person who requests it.

6.1.f. The submittal of a complete application shall not affect the requirement that any source have all preconstruction permits required under the rules of the Director except that a source may, with approval of the Director, elect to file a single permit application to obtain any required preconstruction permits and a Title V operating permit or permit revision, if the procedures required by the applicable preconstruction rule and all requirements of the preconstruction permitting rules are complied with in the issuance of a Title V operating permit.

6.2. Requirement for a permit. Except as provided in subparagraph 6.5.a.5., subsection 5.8,

and as further provided in this subsection no source may operate after the time that it is required to submit a timely and complete application under this rule except in compliance with an effective permit under this rule. If a source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a Title V operating permit is not a violation of this rule until the Director takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 6.1.d of this section and as required by paragraph 4.1.b, the applicant fails to submit by the deadline specified in writing by the Director any additional information identified as being needed to process the application.

6.3. Permit renewal and expiration.

6.3.a. Permits being renewed are subject to the same procedural requirements, including those for public participation, that apply to initial permit issuance.

6.3.b. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subsection 6.2 of this rule and subparagraph 4.1.a.3.

6.3.c. If the Director fails to take final action to deny or approve a timely and complete permit application before the end of the term of the previous permit, the permit shall not expire until the renewal permit has been issued or denied, and any permit shield granted for the permit shall continue in effect during that time.

6.4. Administrative permit amendments.

6.4.a. An "administrative permit amendment" is a permit revision that:

6.4.a.1. Corrects typographical errors;

6.4.a.2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

6.4.a.3. Requires more frequent monitoring or reporting by the permittee;

6.4.a.4. Allows for a change in ownership or operational control of a source where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Director;

6.4.a.5. Incorporate into the Title V operating permit all provisions required under this rule and all preconstruction requirements under Title I of the Clean Air Act (including requirements of 45CSR14 and 45CSR19); or

6.4.a.6. Is approved pursuant to rules of the Director, incorporating federal requirements promulgated under Title IV of the Clean Air Act (Acid Deposition Control).

6.4.b. An administrative permit amendment may be made by the Director consistent with the following:

6.4.b.1. The Director shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the Director designates any such permit revisions as having been made pursuant to this subsection.

6.4.b.2. The Director shall submit a copy of the revised permit to the U.S. EPA.

6.4.b.3. The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

6.4.c. The Director may, upon taking final action granting a request for an administrative

permit amendment, allow coverage by the permit shield in subsection 5.6 of this ~~part~~rule for administrative permit amendments made pursuant to subparagraph 6.4.a.5., which meets the relevant requirements of sections five, six, and seven for significant permit modifications.

6.5. Permit modification. A permit modification is any revision or modification to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments under 6.4 of this rule. Permit modifications for the purposes of the acid deposition control portion of the permit shall be governed by regulations promulgated by the Director in accordance with federal rules under Title IV of the Clean Air Act (Acid Deposition Control).

6.5.a. Minor permit modification procedures.

6.5.a.1. Criteria.

6.5.1.A. Minor permit modification procedures may be used only for those permit modifications that:

6.5.A.1. Do not violate any applicable requirement;

6.5.A.2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

6.5.A.3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient air quality impacts, or a visibility or increment analysis;

6.5.A.4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and which permit or condition has been used to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, a federally enforceable emissions cap used to avoid classification as a modification under any provision of Title I or any alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Clean Air Act;

6.5.A.5. Do not involve preconstruction review under Title I of the Clean Air Act or 45CSR14 and 45CSR19; and

6.5.A.6. Are not required under any rule of the Director to be processed as a significant modification.

6.5.a.1.B. Notwithstanding subparagraph 6.5.a.1.A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in rules of the Director which are approved by U.S. EPA as part of the State Implementation Plan under the Clean Air Act, or which may be otherwise provided for in the Title V operating permit issued under this rule.

~~1.C. Except as provided in this section, permit modifications that involve construction of emission units which:~~

~~C.1. Have the potential to emit two (2) pounds per hour or more or five (5) tons per year or more of any regulated air pollutant shall be subject to minor modification procedures;~~

~~C.2. Results in any increase in emissions of a hazardous or toxic air pollutant listed in Table 45-30C at a facility which, prior to the modification, has the potential to emit the hazardous or toxic air pollutant at or above the amount set forth in Table 45-30C; or~~

~~C.3. Results in an increase in emissions of any hazardous or toxic air pollutant listed in Table 45-30C that would in turn result in total emissions of the hazardous or toxic air~~

~~pollutant at the stationary source equal to or greater than the amounts in Table 45-30C.~~

~~1.D.~~6.5.a.1.C. When a permit is modified, only the conditions subject to modification can be reopened, and all other conditions of the permit remain in effect.

6.5.a.2. Application. An application requesting the use of minor permit modification procedures shall meet the requirements of subsection 4.3 of this rule and shall include the following:

6.5.a.2.A. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

6.5.a.2.B. The source's suggested draft permit;

6.5.a.2.C. Certification by a responsible official, consistent with subsection 4.4 of this rule, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

6.5.a.2.D. Completed forms for the Director to use to notify U.S. EPA and affected states as required under section seven of this rule.

6.5.a.3. U.S. EPA and affected states notification. The Director shall on or before the fifth (5th) day following receipt of the complete permit modification application meet the obligation under paragraphs 7.1.a and 7.2.a to notify U.S. EPA and affected states of the requested permit modification. The proposed permit shall be the same as the draft permit for this purpose. The Director shall promptly send any notice required under 7.2.b of this rule to U.S. EPA. All such notifications shall be by certified mail, return receipt requested.

6.5.a.4. Timetable for issuance. The Director shall not issue a final permit modification until after U.S. EPA's forty-five (45) day review period or until U.S. EPA has notified the Director that U.S. EPA will not object to the issuance of the permit modification. Within ninety (90) days of the Director's receipt of an application under minor permit modification procedure or fifteen (15) days after the end of U.S. EPA's forty-five (45) day review period under subsection 7.3, whichever is later, the Director shall:

6.5.a.4.A. Issue the permit modification as proposed;

6.5.a.4.B. Deny the permit modification application;

6.5.a.4.C. Determine that the requested modification does not meet the minor permit modification procedure criteria and should be reviewed under the significant modification procedures; or

6.5.a.4.D. Revise the draft permit modification and transmit to U.S. EPA, and, if appropriate, affected states, the new proposed permit modification in accordance with 7.1.a and 7.2. In the event that draft permit modifications are made, the Director shall utilize the same procedures outlined in 6.5.a.4.

6.5.a.5. Permittee's ability to make change. A ~~permitee~~ permittee may not make a change to a source proposed in a minor permit modification application unless it has submitted the permit application at least seven (7) days prior to making the proposed change. After the source makes the proposed change allowed by the preceding sentence, and until the Director takes any of the actions specified in 6.5.a.4.A through 6.5.a.4.C of this subsection, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it and violation of

the proposed terms and conditions is relevant in considering any sanction.

6.5.a.6. Permit shield. The permit shield under subsection 5.6 of this rule shall not extend to minor permit modifications.

6.5.b. Significant modification procedures.

6.5.b.1. Criteria. Significant modification procedures shall be used for applications requesting significant permit modifications that do not qualify as minor permit modifications or as administrative amendments including, but not limited to, the following:

6.5.b.1.A. Modifications under any provision of Title I of the Clean Air Act, except those that qualify for processing as administrative permit amendments under subsection 6.4 or any rule of the Director required under Title I of the Clean Air Act;

6.5.b.1.B. A significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting ~~of~~ or recordkeeping permit terms or conditions;

6.5.b.1.C. A change to a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

6.5.b.1.D. Establishment of or change to a permit or condition for which there is no corresponding underlying applicable requirement.

6.5.b.1.E. Proposed changes which in the judgement of the Director would require decisions to be made on significant or complex issues that generate or are likely to generate significant material adverse comment from the public, affected states, or U.S. EPA with respect to the determination of applicable requirements or air quality impacts.

6.5.b.2. Significant permit modifications shall meet all requirements of this section including those for applications, for public participation, review by affected states and review by U.S. EPA as they apply to permit issuance and permit renewal. The Director shall complete the review process for significant permit modifications within six (6) months after receipt of a complete application.

6.6. Reopening for cause.

6.6.a. Each issued permit shall include provisions specifying the conditions under which the permit will be opened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

6.6.a.1. Additional applicable requirements under the Clean Air Act or the Director's legislative rules become applicable to a major source with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to one of the following:

6.6.a.1.A. The permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to subsection 5.6 may extend beyond the original permit term until renewal; or

6.6.a.1.B. All the terms and conditions of the permit including any permit shield that may be granted pursuant to subsection 5.6 shall remain in effect until the renewal permit has been issued or denied.

6.6.a.2. Additional requirements (including excess emissions requirements) become applicable to an affected source under Title IV of the Clean Air Act (Acid Deposition Control) or other legislative rules of the Director. Upon

approval by U.S. EPA, excess emissions offset plans shall be incorporated into the permit.

6.6.a.3. The Director or U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

6.6.a.4. The Director or U.S. EPA determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

6.6.b. Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

6.6.c. Reopenings under paragraph 6.6.a of this section shall not be initiated before a notice of such intent is provided to the source by the Director at least thirty (30) days in advance of the date that the permit is to reopened, except that the Director may provide a shorter time period in the case of an emergency. The notice shall include a statement of the reasons for the reopening of the permit. Until such time as a permit is reissued pursuant to the reopening, the source shall be entitled to the continued protection of any permit shield provided in the permit, unless the Director specifically suspends the shield upon a finding that such suspension is necessary to implement applicable requirements.

6.7. Reopenings for cause resulting from U.S. EPA notice.

6.7.a. The Director shall, within ninety (90) days after receipt of a notification from U.S. EPA that cause exists to terminate, modify, or revoke and reissue a permit, forward to U.S. EPA a proposed determination of termination, modification, or revocation and reissuance, as is appropriate. The Director may request an extension of this ninety (90) day period for an additional ninety (90) days if the Director finds that a new or revised permit application is necessary or that the Director must require the permittee to submit additional information.

6.7.b. The Director shall have ninety (90) days from receipt of a U.S. EPA objection to resolve any objection that U.S. EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with U.S. EPA's objection.

[NOTE: In accordance with the Clean Air Act and federal rules promulgated thereunder, U.S. EPA has authority to terminate, modify, or revoke and reissue a Title V operating permit after failure of the State and permit holder to resolve a U.S. EPA objection and upon proper notice to the permit holder.]

6.8. Public participation.

Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall provide adequate procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

6.8.a. Public notice.

6.8.a.1. Scope:

6.8.a.1.A. Public notice shall be given that the following actions have occurred:

6.8.a.1.A.1. A draft permit has been prepared.

6.8.a.1.A.2. A hearing has been scheduled ~~under paragraph 6.8.b.~~ pursuant to this rule.

6.8.a.1.B. Public notices may describe more than one (1) permit or permit part.

6.8.a.2. Timing:

6.8.a.2.A. Public notice of the preparation of a draft permit shall allow at least thirty (30) days for public comment. Upon request of the permit applicant the public comment period may be extended for an additional thirty (30) days. Further extension of the comment period may be granted by the Director for good cause shown but in no case may the further extension exceed an additional thirty (30) days.

6.8.a.2.B. Public notice of a public hearing shall be given at least thirty (30) days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two (2) notices may be combined.

6.8.a.3. Methods. Public notice shall be given by the following methods ~~except that failure to give notice to any person, other than as provided in part 6.8.a.3.A.3 and subparagraph 6.8.a.3.B, shall not be a cause for denial or delay of permit issuance, or for repeating the public comment period~~:

6.8.a.3.A. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories or permits):

6.8.a.3.A.1. The applicant;

6.8.a.3.A.2. Any other State or Federal agency which the Director knows has issued or is required to issue a permit for the same facility or activity under the Federal Resource Conservation and Recovery Act (RCRA) or other relevant statutes;

6.8.a.3.A.3. Federal, State, and interstate agencies with jurisdiction over public health and the environment, the State Historic Preservation Unit of the Department of Culture and History when new site acquisition is involved, and other appropriate government authorities, including the Federal Land Manager when Federal Class I areas, as defined in 45CSR14, are potentially affected;

6.8.a.3.A.4. Persons on a mailing list developed by:

6.8.a.3.A.4.(a). Including those who request in writing to be on the list;

6.8.a.3.A.4.(b). Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

6.8.a.3.A.4.(c). Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and State funded newsletters or environmental bulletins. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the names of any person who fails to respond to such a request.)

6.8.a.3.A.5. Any unit of local government having jurisdiction over the area where the facility is proposed to be located.

6.8.a.3.B. By the Director publishing the public notice as a Class I legal advertisement in a newspaper in general circulation for the county where the emission will occur.

6.8.a.3.C. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

6.8.a.4. Contents:

6.8.a.4.A. All public notices. All public notices issued under this rule shall contain the following minimum information:

6.8.a.4.A.1. Name and address of the Office of Air Quality;

6.8.a.4.A.2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of general permits;

6.8.a.4.A.3. A brief description of the business conducted at the facility or activity described in the permit application or in the draft permit, when there is no application;

6.8.a.4.A.4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;

6.8.a.4.A.5. A brief description of the comment procedures required by subdivisions 6.8.b and 6.8.c and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision; and

6.8.a.4.B. Public notices for hearings. In addition to the requirements of subparagraph 6.8.a.4.A of this section, public notice of a hearing shall contain the following information:

6.8.a.4.B.1. Reference to the date of previous public notices relating to the permit;

6.8.a.4.B.2. Date, time, and place of the hearing; and

6.8.a.4.B.3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

6.8.a.4.B.4. In addition to the general public notice described in subparagraph 6.8.a.4.A of this legislative rule, all persons identified in paragraph 6.8.a.3 of this section shall be mailed a copy of the fact sheet, if any, and notification of where to inspect or how to receive a copy of the draft permit and application.

6.8.b. Public comments and requests for public hearings.

During the public comment period provided under paragraph 6.8.a, any interested person may submit written comments on the draft permit and may request a public hearing, if no public hearing has already been scheduled. The Director shall grant such a request for a hearing if he concludes that a public hearing is appropriate after consideration of the criteria in paragraph 6.8.c.1. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be responded to as provided in paragraph 6.8.c.

6.8.c. Public hearings.

6.8.c.1. The Director shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest on issues relevant to the draft permit(s). The Director may also hold a public hearing at his or her discretion, whenever, for instance, such a hearing might clarify one (1) or more issues involved in the permit decision.

6.8.c.2. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing under paragraph 6.8.a.2 shall automatically be extended to ten (10) days after the close of any public hearings under this section.

6.8.c.3. A tape recording or written transcript of the hearing shall be made available to the public, upon request.

6.8.c.4. Any public hearing required under the provisions of this subsection shall be held in the general area or the county in which a facility is located.

6.8.d. Reopening of the public comment period.

6.8.d.1. If any data, information or arguments submitted during the public comment period raise substantial new questions concerning a permit, or if as a result of comments submitted by

someone other than the permit applicant, the Director determines to revise any condition of the permit that has been subject to initial public notice, the Director shall take one (1) or more of the following actions:

6.8.d.1.A. Prepare a new draft permit, appropriately modified, under section five of this legislative rule;

6.8.d.1.B. Prepare a revised fact sheet under subsection 6.9; or

6.8.d.1.C. Reopen or extend the comment period under paragraph 6.8.a. to give interested persons an opportunity to comment on the information or arguments submitted.

6.8.d.2. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice shall define the scope of the reopening.

6.8.e. Response to comments.

6.8.e.1. At the time that any final permit is issued, the Director shall issue a response to comments. This response shall:

6.8.e.1.A. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

6.8.e.1.B. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

6.8.e.2. The response to comments shall be delivered to any person who commented or any person who requests the same.

6.9. Fact sheet.

6.9.a. A fact sheet shall be prepared for every draft permit (including general permits) and for every facility or activity subject to this rule. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person and to the persons required under paragraph 6.8.a.3.

6.9.b. When a term or condition of the final permit differs from the draft permit the Director shall prepare a statement of basis that briefly describes each change from the changes in the draft permit and the reasons for the changes. The statement of basis shall be sent to the applicant, and to any other person upon request.

6.9.c. The fact sheet shall include, when applicable:

6.9.c.1. A brief description of the type of facility or activity which is the subject of the draft permit;

6.9.c.2. The type and quantity of emissions which are proposed to be or are being discharged;

6.9.c.3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

6.9.c.4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

6.9.c.5. A description of the procedures for reaching a final decision on the draft permit including;

6.9.c.5.A. The beginning and ending dates of the comment period under paragraph 6.8.a and the address where comments will be received;

6.9.c.5.B. Procedures for requesting a hearing and the nature of that hearing; and

6.9.c.5.C. Any other procedures by which the public may participate in the final decision.

6.9.c.6. Name and telephone number of a person to contact for additional information;

6.9.c.7. Any calculations or other necessary explanation of the derivation of specific emissions limitations and conditions including a citation to the applicable emission regulations, control technology guideline, or performance standard provisions and reasons why they are applicable or an explanation of how any alternative emission limitations were developed;

6.9.c.8. When appropriate, a sketch or detailed description of the location of the emission source(s) described in the application.

§45-30-7. Permit Review by U.S. EPA and Affected States.

7.1. Transmission of information to U.S. EPA.

7.1.a. The Director shall provide to the U.S. EPA a copy of each permit application (including any application for permit modification), each proposed permit, and each final Title V operating permit. The applicant may be required by the Director to provide a copy of the permit application (including the compliance plan) directly to the U.S. EPA. Upon agreement with the U.S. EPA, the Director may submit to the U.S. EPA a permit application summary form and any relevant portion of the permit application and compliance plan in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with U.S. EPA's national database management system.

7.1.b. The Director shall retain for five (5) years such records and submit to U.S. EPA such information as U.S. EPA may reasonably require to ascertain whether the State program complies with the requirements of the Clean Air Act.

7.2. Review by affected states.

7.2.a. The Director shall give notice of each draft permit to any affected state on or before the time that the Director provides this notice to the public under subsection 6.8 of this rule, except to the extent paragraph 6.5.a allows the timing of the notice to be different.

7.2.b. The Director, as part of the submittal of the proposed permit to U.S. EPA, (or as soon as possible after the submittal for minor permit modification procedures allowed under paragraph 6.5.a) shall notify U.S. EPA and any affected state in writing of any refusal by the Director to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the Director's reasons for not accepting any such recommendation. The Director is not required to accept recommendations that are not based on applicable requirements or the requirements of this rule.

7.3. U.S. EPA objection.

7.3.a. A permit shall not be issued by the Director if U.S. EPA objects in writing to the issuance of the permit within forty-five (45) days of the receipt of the proposed permit and all necessary supporting information pursuant to § 505 of the Clean Air Act.

7.3.b. For consideration by the Director as a U.S. EPA objection under paragraph 7.3.a, the objection must contain a statement of U.S. EPA's reasons for objection and a description of the terms and conditions that U.S. EPA believes the permit must include to respond to the objections.

7.4. Public petitions to the U.S. EPA. If the U.S. EPA does not object in writing under subsection 7.3 of this section, any person may petition U.S. EPA within sixty (60) days after the expiration of U.S. EPA's forty-five (45)-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in subsection 6.8 of this rule, unless the petitioner demonstrates that it was impracticable to raise such objections

within such period, or unless the grounds for such objection arose after such period. If the U.S. EPA objects to the permit as a result of a petition filed under this subsection, the Director shall not issue the permit until U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45)-day review period and prior to an U.S. EPA objection.

[NOTE: In accordance with the provisions of the Clean Air Act and federal rules promulgated thereunder, U.S. EPA may issue, deny, modify, terminate, or revoke a Title V permit upon failure of the Director to resolve a U. S. EPA objection to a proposed permit or if the Director issues a permit prior to the receipt of a U.S. EPA objection under subsections 7.3 and 7.4.]

7.5. Prohibition on default issuance. No Title V operating permit (including a permit renewal or modification) shall be issued by the Director until affected states and U.S. EPA have had an opportunity to review the proposed permit as required under this section.

§45-30-8. Fees.

8.1. After the effective date of this rule, all stationary sources which are or will be required to obtain an operating permit under this rule shall pay fees in accordance with the following:

8.1.a. Transition fees. Annual Fees for all stationary sources shall be due on or before July 1, 1994, in the amount of fifteen (15) dollars per ton for actual emissions of all regulated air pollutants (for fee calculation) discharged during the calendar year 1993.

8.1.b. Title V operating permit fees. On July 1, 1995, and on July 1 of each year thereafter annual fees for all stationary sources requiring Title V operating permits shall be eighteen (18) dollars per ton subject to an adjustment enumerated in paragraph 8.1.c, for actual emissions of all regulated air pollutants (for fee calculation) discharged during the most recent calendar year or portion thereof.

8.1.c. On or before May 1, 1995 and each May 1 thereafter, the Director shall determine whether to adjust the fees required under paragraph b of this subsection to adequately reflect the reasonable cost of the Title V operating permit program. The Director may make such an adjustment in fees of up to $2 per ton. The fees adjusted pursuant to this paragraph are not cumulative and shall remain adjusted for not more than one year.

8.1.d. No fee shall be required under this rule with respect to emissions from any affected unit under § 404 of the Clean Air Act until the period beginning January 1, 2000. Thereafter, fees will be calculated in accordance with 8.1.b.

8.1.d.1. Facilities which contain only affected units under § 404 of the Clean Air Act continue to be subject to fees under 45CSR22 until the period beginning January 1, 2000.

8.1.d.2. Facilities which contain affected units under § 404 of the Clean Air Act and other affected units, under Title IV of the Clean Air Act (Acid Deposition Control), continue to be subject to fees under 45CSR22 for the entire facility until the period beginning January 1, 2000, and are subject to fees for such other affected units calculated in accordance with paragraphs 8.1.a and 8.1.b of this rule.

8.2. Fee cap. In determining fees under section eight, emissions of each regulated pollutant (for fee calculation) by a source in excess of four thousand tons per year (4,000 tpy) shall not be included in fee calculations.

8.3. Minimum fees. Any non-major source required to have a Title V operating permit under this rule shall pay fees in accordance with subsection 8.1, unless such calculated fees are less than the minimum fee of $200.00 per year. In such cases where the calculated fee is less than the minimum fee, the source shall be subject to the minimum fee.

8.4. Consumer price index riser. Fees calculated for each fiscal year under the fee schedule in paragraph 8.1.b shall be increased by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1993. For purposes of this clause:

8.4.a. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31 of each calendar year, and

8.4.b. The revision of the Consumer Price Index, if any, which is most consistent with the Consumer Price Index for 1993 shall be used.

8.5. Fee merger. Any source subject to annual operating certificate fees under 45CSR22 "Air Quality Management Fee Program" and subject to fees under this rule shall be required to pay only the higher calculated fee.

8.6. Penalties and interest. Any person who operates a stationary source in violation of section eight of this rule shall be subject to a penalty equal to five (5) percent of the Title V operating permit fee for each calendar month or portion thereof in which the violation continues in addition to the annual fee required to be paid under this section. Fees due for the fiscal year beginning July 1 shall not be subject to any penalties if paid on or before July 31 of that fiscal year. This penalty for delinquent payment is separate from and unrelated to any other penalties assessed by a court or collected by the Director pursuant to W.. Va. Code §22-5-1 et seq., or any rules of the Director.

8.7. Certified emissions statement.

8.7.a. Fees will be based upon a certified emissions statement from a responsible official. The certified emissions statement shall contain an accurate accounting of the actual emissions of all regulated air pollutants and all regulated air pollutants (for fee calculation) from the source as defined in subsections 2.33 and 2.34 for the most recent calendar year.

8.7.b. Each certified emissions statement shall be subject to review by the Director. The Director shall make or shall require the responsible official to make such adjustments or corrections to the certified emissions as the Director determines to be necessary.

8.7.b.1. The source shall be liable for any increased fees resulting from any adjustments to the certified emissions statements made pursuant to this paragraph.

8.7.b.2. The Director shall not issue a Title V operating permit until such adjustments have been made and any such liability satisfied.

8.7.b.3. The Director shall credit the source with any decreasing adjustments to the certified emissions statement made pursuant to this paragraph.

8.7.b.4. The Director shall periodically provide or publish information and criteria for the purpose of emission statement and permit application preparation. Such information may be provided by reference to available U.S. EPA or other documents.

8.7.c. Fees and certified emissions statements shall be due on July 1, 1994, and on July 1 of each year thereafter.

8.8. Beginning in 1995, the Director shall, on or before October 1 of each fiscal year, prepare an accounting of all Title V fees received in the previous fiscal year and the manner in which they were used to fund the Title V operating permit program.

§45-30-9. Transition plan.

9.1. The Director shall assign for review and processing each application for operating permit and shall set a timetable for the issuance of each permit in accordance with the following criteria:

9.1.a. Date of receipt of application;

9.1.b. Relative complexity of the application;

9.1.c. Anticipated schedule for federal and state enactment of new applicable requirements which are anticipated to be incorporated into the permit;

9.1.d. Type and amounts of air pollutants that will be discharged;

9.1.e. Availability and particular training of reviewing staff; and

9.1.f. Attainment status of area in which the stationary source is located or other geographical factors.

9.2. Notwithstanding other provisions of section nine, the Director may re-prioritize or reclassify any permit application based on changes in regulatory requirements, area attainment status, or other relevant factors.

9.3. In establishing and periodically revising the timetable required in subsection 9.1, the Director shall assure that final action is taken on at least one-third of all Title V permit applications annually over a period not to exceed three (3) years from the effective date of the operating permit program.

§45-30-10. Enforcement.

10.1. General. The provisions of this rule may be enforced by all of the applicable provisions of W. Va. Code §22-5-1, et seq.

10.2. Violations. Civil penalties shall be recoverable for the violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspections, entry or monitoring activities; any requirement for submission of reports; any rule or order of the Director. Such violations shall constitute serious violations for purposes of civil enforcement as contained in W. Va. Code §22-5-6.

10.3. Federal enforcement. For purposes of federal enforcement of any Title V operating permit or provision established under this rule, any reference to the Director shall also mean the Administrator of U.S. EPA.

10.4. Tampering prohibited. Pursuant to W. Va. Code §22-5-6, criminal penalties shall be recoverable against any person who knowingly renders inaccurate any required emission or process monitoring device or method.

§45-30-11. Permit Suspension, Modification, Revocation, and Reissuance.

The Director may suspend, modify, or revoke and reissue a Title V operating permit in accordance with the provisions contained in W. Va. Code §22-5-5.

§45-30-12. Authority of the Director to Establish Applicable Requirements.

12.1. After the effective date of the operating permit program, the Director shall determine and apply case-by-case MACT standards to each category contained in the "Initial List of Categories of Sources Under 112(c)(l) of the Clean Air Act Amendments of 1990," 57 Fed. Reg. 31, 576 (July 16, 1992) for each source category or subcategory for which U.S. EPA fails to timely promulgate a standard in accordance with the requirements of § 112(e) of the Clean Air Act.

12.2. ~~After the effective date of the operating permit program, the Director shall determine and apply case-by-case MACT standards to every major source of hazardous air pollutants which seeks a modification under the terms of its Title V operating permit and where no applicable emissions limitations have been adopted by the Director. Such MACT standards must be equivalent to any applicable standard (if any) promulgated for such sources by U.S. EPA.~~ [RESERVED]

12.3. After the effective date of the operating permit program, the Director shall determine and apply case-by-case MACT standards to construction or reconstruction of any major source

of hazardous air pollutants where no applicable emissions limitations have been adopted by the Director. Such MACT standards must be equivalent to any applicable standard (if any) promulgated for such sources by U.S. EPA.

12.4. In determining case-by-case MACT standards, the Director shall grant reasonable compliance schedules for existing sources, as provided under § 112(e) of the Clean Air Act, and shall not require application for MACT under paragraph 4.1.a.5 where a source has met the early reduction requirement of § 112(i)(5) of the Clean Air Act.

12.5. The Director may accept delegation of authority from U.S. EPA to administer permits issued by U.S. EPA under the provisions of Title IV of the Clean Air Act (Acid Deposition Control).

12.6. The Director may accept delegation of authority to administer permits issued by U.S. EPA under the early reduction program for hazardous air pollutants of § 112(i)(5) of the Clean Air Act. Such authority shall include the ability to collect emission-based fees under section eight of this rule.

12.7. The Director may incorporate any provision into a permit which has been proposed by or agreed to by a permit applicant and which does not conflict with any applicable requirement. All such provisions shall be enforceable after issuance of a final permit.

§45-30-13. Severability.

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

§45-30-14. Conflict with Other Rules.

If a source is required to obtain an operating permit pursuant to this rule and is also required to obtain an operating permit under any other rule of the Director (not including preconstruction permits), then the provisions of this rule shall supersede the provisions of such other rule of the Director which requires an operating permit.

TABLE 45-30A

HAZARDOUS AIR POLLUTANTS

CAS Number	Chemical Name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisdine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl) phthalate (DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
~~105602~~	~~Caprolactam~~
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol

98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline(N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropene)
106887	1,2-Expoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclo-pentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethyl-phosphoramide

110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform(1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis (2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloro-nitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)

91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-etrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds[1]
0	Glycol ethers[2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers[3]
0	Nickel Compounds
0	Polycylic Organic Matter[4]
0	Radionuclides (including radon)[5]
0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemicals (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

[1]X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or $Ca(CN)_2$

[2]Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R-(OCH2CH2)_n-OR'$ where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: $R-(OCH2CH)_n-OH$. Polymers are excluded from the glycol category.

[3]Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4]Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

[5]A type of atom which spontaneously undergoes radioactive decay.

TABLE 45-30B

CLASS I AND CLASS II SUBSTANCES

Class I Substances

Group I
chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

This list also includes the isomers of the substances listed above, other than 1,1,2-trichloroethane (an isomer of methyl chloroform).

Class II Substances

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
hydrochlorofluorocarbon-226 (HCFC-226)
hydrochlorofluorocarbon-231 (HCFC-231)
hydrochlorofluorocabron-232 (HCFC-232)
hydrochlorofluorocarbon-233 (HCFC-233)
hydrochlorofluorocarbon-234 (HCFC-234)
hydrochlorofluorocarbon-235 (HCFC-235)
hydrochlorofluorocarbon-241 (HCFC-241)
hydrochlorofluorocarbon-242 (HCFC-242)
hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

This list also includes the isomers of the substances listed above.

TABLE 45-30C

Hazardous/Toxic Pollutant	Potential Emission Rate pounds/year
Acrylonitrile	500
Allyl Chloride	10,000
Arsenic Compounds (Inorganic)	200
Asbestos	14
Benzene	1,000
Beryllium	0.8
1,3 Butadiene	500
Carbon Tetrachloride	1,000
Chloroform	1,000
Ethylene Dichloride	1,000
Ethylene Oxide	500
Formaldehyde	1,000
Lead or lead compounds	1,200
Mercury	200
Methylene Chloride	5,000
Propylene Oxide	5,000
Trichloroethylene	10,000
Vinyl chloride	1,000
Vinylidene Chloride	2,000

specifically designed to implement section 112(g). This approval is limited to the implementation of the 112(g) rule and is effective only during any transition time between the effective date of the 112(g) rule and the adoption of specific rules by Alabama to implement section 112(g). To provide the State and Locals adequate time to adopt regulations consistent with federal requirements, this approval is granted with a duration of 18 months following promulgation by EPA of section 112(g) regulations.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is approving under section 112(l)(5) and 40 CFR 63.91, the State's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA is delegating all existing standards and programs under 40 CFR Parts 61 and 63. This program for delegation applies to part 70 and non-part 70 sources.[1]

III. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including 17 public comments received and reviewed by EPA on the proposal, are contained in docket number AL-95-01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 of the Unfunded Mandates Act requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for Alabama in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Alabama

(a) Alabama Department of Environmental Management: submitted on December 15, 1993, and supplemented on March 3, 1994; March 18, 1994; June 5, 1995; July 14, 1995; and August 28, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) City of Huntsville Department of Natural Resources and Environmental Management: submitted on November 15, 1993, and supplemented on July 20, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(c) Jefferson County Department of Health: submitted on December 14, 1993, and supplemented on July 14, 1995; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

* * * * *

[FR Doc. 95-28212 Filed 11-14-95; 8:45 am]

BILLING CODE 6560-50-P

[1] The radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with ADEM, JCDH, and the City of Huntsville in the development of their radionuclide program to ensure that permits are issued in a timely manner.

---

40 CFR Part 70

[AD-FRL-5332-5]

Title V Clean Air Act Final Interim Approval of Operating Permits Program; West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permits program submitted by West Virginia for the purpose of complying with federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

ADDRESSES: Copies of West Virginia's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Air, Radiation, and Toxics Division, U.S.

Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson, (3AT23), Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (CAA), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that states seeking to administer a Title V operating permits program develop and submit a program to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval of an operating permits program submittal. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by November 15, 1995, or by the expiration of the interim approval period, it must establish and implement a federal program.

On August 29, 1995, EPA proposed interim approval of the operating permits program for West Virginia. (See 60 FR 44799). EPA compiled a technical support document (TSD) associated with the proposal which contains a detailed analysis of West Virginia's operating permits program. In this document EPA is taking final action to promulgate interim approval of the operating permits program for West Virginia.

II. Analysis of State Submission

On November 12, 1993, West Virginia submitted an operating permits program to satisfy the requirements of the CAA and 40 CFR Part 70 and was found to be administratively complete pursuant to 40 CFR 70.4(e)(1). The submittal was supplemented by additional materials on August 26 and September 29, 1994. EPA reviewed the program against the criteria for approval in section 502 of the CAA and the Part 70 regulations. EPA determined, as fully described in the notice of proposed interim approval of the state's operating permits program (see 60 FR 44799 (August 29, 1995)) and the TSD for this action, that West Virginia's operating permits program substantially meets the requirements of the CAA and Part 70.

III. Response to Public Comments

EPA received several comments from industry representatives during the public comment period. Additional comments were submitted after the expiration of the public comment period. These comments and EPA's responses are grouped into eight (8) categories. All comments are contained in the docket at the address noted in the **ADDRESSES** section above.

1. "Insignificant Activities"

Comment: The authority of the Chief of West Virginia's Office of Air Quality (WVOAQ) to make additions to the insignificant activity list should not be limited as proposed by EPA. EPA should indicate to the WVOAQ that it is appropriate to recognize "trivial sources", described in EPA's July 10, 1995 "White Paper for Streamlined Development of Part 70 Permit Applications" (herein after the "White Paper"), as being exempt from Part 70 permit applications.

EPA Response: Section 70.5(c) specifically requires activities and emissions levels to be considered as "insignificant" to be approved by EPA as part of a state's operating permits program. EPA's criteria for approving activities and emissions levels as "insignificant" derive from the requirement that permit applications include all information necessary to determine the applicability of, or to impose, any applicable requirement, and to evaluate fees.

Section 3.2.d.M of West Virginia's rule authorizes the Chief to determine activities or emissions units to be insignificant beyond those approved as part of West Virginia's operating permits program. The Chief's discretion is not limited to any specific categories of activities or emission levels. As discussed in the proposed notice, this broad provision is not approvable because EPA has no way to evaluate such activities against the criteria discussed above. Furthermore, this provision allows new exemptions from permit requirements to be granted without prior EPA approval, an approach which is inconsistent with the requirements of section 70.5(c).

EPA recognizes the desire and need for state permitting authorities to have the flexibility to determine additional activities other than those listed and approved as part of a state's operating permits program to be insignificant. For this reason, EPA has proposed to allow the Chief to determine on a permit-by-permit basis and within bounds approved by EPA as part of West Virginia's program additional activities to be considered as insignificant. EPA believes that this approach will provide the needed flexibility in a manner which is consistent with the requirements of section 70.5(c). West Virginia also has the option to submit to EPA for approval additional insignificant activities or emissions levels which are to apply to all permittees.

As discussed in the "White Paper", EPA believes that, in addition to the insignificant activity provisions of section 70.5(c), section 70.5 allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in any way implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's Part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial. However, additional exemptions, to the extent that the activities they cover are not clearly trivial, still need to be approved by EPA before being added to state lists of insignificant activities.

While section 70.5 has been interpreted to allow flexibility for the determination of trivial activities, EPA will defer to West Virginia to determine whether similar flexibility exists under its own permit application provisions. EPA believes that it is appropriate to have such determinations made in the first instance at the state level as the decision of whether any particular item should be on a state's trivial list may depend on state-specific factors, such as whether the activity is subject to state-only requirements or specific requirements of the SIP.

2. Emissions Trading/Volatile Organic Compounds (VOCs)

Comment: EPA should not prohibit the Chief's discretion in establishing permit provisions which allow emissions trading of categories of VOCs. There is no reason why emissions trading of this type should be considered as an alternative operating scenario when allowed by applicable requirements. EPA's position severely restricts the Chief's ability to administer permits and reduces operational flexibility for business and industry.

EPA Response: West Virginia 45CSR30, section 5.1.j.D. provides that permit provisions for emissions trading "[m]ay include categories of VOCs

which in the Chief's discretion can be substituted for one another in a production process." EPA's primary concern with this provision is that, as written, it is not clear how substituting categories of VOCs in a production process could be considered to be emissions trading.

According to the public record of the adoption of West Virginia's operating permits regulations, this provision was added to clarify that West Virginia's alternative operating scenario provisions should not be limited to changes in the hours of production or process configuration, but should also encompass the use of different chemicals to make slight changes in the production process if consistent with applicable requirements. In response to a request for clarification of this provision, a supplemental Attorney General's opinion submitted to EPA by West Virginia on September 29, 1994 acknowledged that section 5.1.j.D. was misplaced and instead belonged in section 5.1.i.D.

EPA recognizes that Part 70 allows permits to contain provisions, if the permit applicant requests them, for emissions trading in accordance with applicable requirements. In no way is EPA attempting to limit this authority or reduce operational flexibility for business and industry by prohibiting categories of VOCs from being traded under authorized emissions trading provisions.

3. Section 112(g) Implementation

Comment: The immediate implementation of section 112(g) following promulgation of EPA's regulations is not workable. An appropriate amount of time must be provided to develop state regulations. An appropriate time limit for West Virginia to adopt section 112(g) rules is 24 months.

EPA response: As discussed in the proposed rulemaking, EPA had until recently interpreted the CAA to require sources to comply with section 112(g) beginning on the date of approval of the state's operating permits program regardless of whether EPA had completed its section 112(g) rulemaking. EPA's current interpretation of the CAA postpones the requirement for sources to comply with section 112(g) until after the time EPA has promulgated a rule addressing that provision (see 60 FR 8333).

EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule to allow states time to adopt rules implementing the federal rule. This decision, however, will be made in the context of the final 112(g) rulemaking. Consequently, EPA will not respond to the comment related to the effective date of section 112(g) in this document.

Unless and until EPA provides for such an additional postponement of section 112(g), West Virginia must be able to implement section 112(g) during the transition period between promulgation of the federal section 112(g) rule and adoption of West Virginia's implementing regulations. West Virginia will be required to adopt state rules in a time frame consistent with the requirements of the federal section 112(g) rule. To the extent that the federal section 112(g) rule does not establish a timeframe for the adoption of state rules, West Virginia will be allowed up to 24 months to implement its "transition mechanisms" in place of state 112(g) regulations. EPA believes twenty-four (24) months to be an appropriate timeframe since West Virginia's rulemaking procedures require regulations to be approved by the state legislature prior to adoption.

4. Fees

Comment: West Virginia's fee structure is adequate to maintain the quality of the program. No additional flexibility to adjust permitting fees is required.

EPA Response: EPA is not requiring West Virginia to adjust its fee structure in any way. EPA's fee discussion in the proposed notice merely mentioned that by having additional flexibility to adjust fee levels, West Virginia would be in a better position to respond to resource needs without having to wait for legislative approval.

5. Effective Date

Comment: West Virginia's electronic permit application forms have not been completed and are not available to the regulated community. Therefore, West Virginia has not fulfilled the requirements of 70.4(b)(4)(i) for permit application forms. The interim approval should be provided with an effective date of April 1, 1996 so that West Virginia will have ample time to complete the electronic forms.

EPA Response: West Virginia's electronic permit application forms are completed and available to the regulated community. These forms were submitted to EPA on October 18, 1995 to replace the hard copy permit application forms submitted on November 12, 1993 as part of the original operating permits program to satisfy the requirements of section 70.4(b)(4)(i). No postponement of the effective date is warranted.

6. "De Minimis" Changes

Comment A: EPA's requirement for removal of section 6.5.a.A.(c) is not mandated under Part 70 in light of the other "gatekeeper" provisions of section 6.5 which serve to prevent Title I modifications or constructions from being exempt from permit modification procedures.

EPA Response: EPA agrees that the "gatekeeper" provisions of section 6.5.a.A. do serve to prevent Title I modifications or constructions from being exempt from permit modification procedures. However, section 6.5.a.A.(c) allows changes which are below certain "de minimis" emissions levels which would otherwise be required to be processed as minor permit modifications to be completely exempt from such procedures. While Part 70 may allow certain of these changes to instead be processed "off-permit", sources making "off-permit" changes must provide contemporaneous written notice of the change to the permitting authority and to EPA. As written, section 6.5.a.A.(c) does not require any reporting requirements for changes defined to be "de minimis".

Comment B: Section 6.5.a.A.(c) should not be removed as described by EPA. This section, authorizing certain "de minimis" changes to occur without a permit modification is consistent with the provisions of the "White Paper".

EPA Response: EPA disagrees. The "White Paper" clarifies EPA's expectations for permit application information only. These clarifications were necessary to streamline and simplify the development of Part 70 permit applications and did not address the topic of permit revisions. Part 70 does not provide "de minimis" levels for source changes below which no permit modification is required.

7. Definition of "Emissions Unit"/112(b) Pollutants

Comment: EPA considers West Virginia's section 2.18 definition of the term "Emissions unit" to be deficient since it does not expressly include activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the Clean Air Act in addition to pollutants considered to be "regulated air pollutants". As a practical matter, are there any pollutants listed under section 112(b) of the CAA that are not now "regulated air pollutants"?

EPA Response: The population of regulated air pollutants (RAPs), as described in an April 26, 1993 guidance document entitled "Definition of Regulated Air Pollutant for Purposes of

Title V", is composed of the following categories of pollutants: (1) Nitrogen oxides (NO_X) and volatile organic compounds (VOCs); (2) any pollutants for which an ambient air quality standard has been promulgated; (3) any pollutant that is subject to a new source performance standard under section 111 of the CAA; (4) any Class I or Class II ozone-depleting substance specified under Title VI of the CAA; and (5) any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the CAA.

While it is true that section 112(b) pollutants are "regulated air pollutants" if they fall under any one of the five (5) categories of pollutants listed above, EPA has not determined that each of the 189 pollutants listed under section 112(b) of the CAA are "regulated air pollutants" at this time. Such a determination would entail an analysis of each of the 189 pollutants listed in section 112(b) of the CAA with respect to the five categories of RAPs, an effort which EPA has not undertaken to date. If a determination is made that all of the section 112(b) pollutants are RAPs then the scope of pollutants defined under West Virginia's definition of "Emissions unit" would be broad enough to fully meet the section 70.2 definition of "Emissions unit". Until such a determination is made, West Virginia must define the term "Emissions unit" to specifically include pollutants listed under section 112(b) of the CAA consistent with the section 70.2 definition. West Virginia may chose to submit such a determination instead of modifying its definition of "Emissions unit" to satisfy the condition for interim approval.

8. Criminal Penalties for Knowing Misrepresentations of Fact

Comment: In its proposed interim approval of West Virginia's Title V operating permit Program, EPA requires West Virginia to modify W. Va. Code § 22–5–6(b)(1) of the enabling statute for the program to provide for a maximum criminal penalty of not less than $10,000 per day per violation for knowing misrepresentations of fact. One commenter questions whether the knowing misrepresentation of material fact is truly amenable to the "continuing violation" position EPA has taken in 40 CFR 70.11(a)(3)(iii). The commenter does not further articulate an argument on this point, but goes on to note that, while Section 502(b)(5)(E) of the CAA, as amended, 42 U.S.C. 7661a(b)(5)(E), provides that state operating permit programs include the authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, the same subsection, "vests discretion with the States to establish 'appropriate criminal penalties' in their respective Title V programs." Finally, the commenter argues that, in light of the recent decision in *U.S.* v. *Telluride Company*, 884 F. Supp. 404 (D. Colorado, May 2, 1995), EPA's "efforts to apply the 'continuing violation' theory to this particular type of violation seems misdirected. Just as in the *Telluride* case, where the discharge of fill materials into wetlands was held not to be a 'continuing violation,' the misrepresentation of material fact on an application or other report is a discrete action which a reviewing court will most certainly find not to be continuing in nature."

EPA Response: EPA's clear requirement at 40 CFR 70.11(a)(3)(iii) that state operating permit programs include the authority to recover criminal penalties in an amount of not less than $10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method, is grounded in legitimate concerns that the environmental risks engendered by such conduct continue until the false information is corrected. In fact, in many circumstances, as where a required monitoring device is tampered with, it is impossible to obtain correct information after the fact, and in any such circumstance, continuing environmental contamination can go uncorrected where required information is falsified. The "continuing violation" theory at 40 CFR 70.11(a)(3)(iii) is consistent with EPA's position elsewhere in the CAA and under other statutes.

The commenter is misguided in its view that the statutory language at Section 502(b)(5)(E) which provides that state operating permit programs must include, "appropriate criminal penalties," amounts to a Congressional grant of discretion to the states to determine what constitutes appropriate criminal penalties. There is nothing to suggest that Congress viewed the matter in this way, and it is counter-intuitive to assume that Congress, while concerned enough about civil violations to require maximum civil penalties to be assessed at at least $10,000 per day per violation, at the same time felt it would be appropriate for states to set significantly less stringent penalties for criminal behavior, which is what West Virginia has done here. In fact, as is the normal course, EPA was charged with interpreting Section 502, and did so with the promulgation of 40 CFR part 70. In doing so, EPA made the clear determination that appropriate criminal penalties include, at a minimum, those penalties specified at 40 CFR 70.11(a)(3)(iii). This proposed action on the West Virginia operating permit program is consistent with that interpretation.

Finally, notwithstanding the view of the U.S. District Court for the District of Colorado on the continuing nature of discharges to wetlands under the Clean Water Act, the *Telluride* decision has not warranted a reversal of EPA's position under Section 502 of the Clean Air Act, as set forth above, on the continuing nature of knowingly false material statements, representations or certifications in forms, notices or reports required by a permit, or the knowing tampering to render inaccurate any required monitoring device or method.

In addition to the eight (8) categories of comments discussed above, one general comment raised with respect to several of the proposed interim approval issues questions why such program deficiencies warrant interim approval status. Although this same comment was submitted with respect to several of the proposed interim approval issues, EPA will respond to this comment generally in this notice.

The Part 70 regulations define the minimum elements required by the CAA for approval of state operating permit programs. Section 70.4(d) authorizes EPA to grant interim approval in situations where a state's program substantially meets the requirements of Part 70, but is not fully approvable. In reviewing West Virginia's operating permit regulations, the impact of seemingly "small" deficiencies such as vague or awkward language, misplaced, misreferenced or mislabeled provisions, and omissions prevents EPA from being able to determine that the requirements of Part 70 are fully met. EPA identified such deficiencies as "interim approval issues" which West Virginia must revise, modify or otherwise clarify to fully meet Part 70's requirements. To the extent that EPA's concerns can be satisfied through other mechanisms, regulatory revisions may not be necessary. Specific responses to each comment submitted can be found in a response to comments document located in the public docket at the address noted in the **ADDRESSES** section above.

Final Action

EPA is promulgating interim approval of the operating permits program submitted by West Virginia on November 12, 1993, and supplemented on August 26 and September 29, 1994. West Virginia must make the following changes to the operating permits program to fully meet the requirements of the July 21, 1992 version of Part 70. (See 60 FR 44799):

1. Clarify that the section 2.18 definition of "Emissions unit" includes activities or parts of activities which emit or potentially emit pollutants listed under section 112(b) of the CAA.

2. Clarify in section 3.2.d that permit applications will contain sufficient information needed to determine the applicability of, or to impose, all applicable requirements. West Virginia must also ensure that the insignificant activities list approved as part of the state's program will not be modified without prior EPA approval. Moreover, West Virginia must clarify that potential emissions from all insignificant activities or emissions units, whether included in section 3.2.d. or determined by the Chief on an application by application basis, will be included in determining whether a source is a major source.

3. Clarify in section 3.3.a that permits issued to major sources will include all applicable requirements that apply to the source, including those applicable requirements which may be later found to be applicable to one or more "insignificant activities".

4. Either remove the section 5.1.j.D. provision for VOC category substitution or clarify how it will be implemented within the context of emissions trading.

5. Clarify in section 5.3.e.A. that permits will contain provisions requiring compliance certifications to be submitted at least annually or such more frequent periods as specified by an applicable requirement or by the permitting authority.

6. Clarify in section 5.5 that for temporary sources that do not obtain a new preconstruction permit prior to each change in location, the operating permits shall include a requirement that the owner operator notify the Chief at least ten (10) days in advance of each change in location.

7. Clarify in section 4.1 that sources which become subject to the permitting program after the effective date are required to submit permit applications within 12 months.

8. Remove section 6.5.a.A.(c).

9. Clarify in section 6.8.a.A.(a).(B) that public notice will be given for all scheduled public hearings, not just those public hearings which have been scheduled at the request of an interested person.

10. Clarify in section 6.8.a.C. that for all permit modification proceedings, except those modifications qualifying for minor permit modifications or fast-track modifications under the Acid Rain Program, public notice will be given by publication in a newspaper of general circulation in the area where the source is located (or in a state publication designed to give general public notice), and to persons on a mailing list developed by the permitting authority including those who request in writing to be on the list.

11. Clarify W. Va. Code section 22-5-6(b)(1) as necessary to provide for a maximum criminal penalty in an amount of not less than § 10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any forms, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method.

West Virginia must also seek amendments to fix errors in 45CSR33—"Acid Rain Provisions and Permits" and, until such regulatory changes are adopted, interpret 45CSR33 consistent with the requirements of part 72 in accordance with commitments made in a June 23, 1995 letter to EPA.

The scope of West Virginia's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within West Virginia, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.*, 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until December 15, 1997. During this interim approval period, West Virginia is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a federal operating permits program in West Virginia. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If West Virginia fails to submit a complete corrective program for full approval by June 16, 1997, EPA will start an 18-month clock for mandatory sanctions. If West Virginia then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the West Virginia has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of West Virginia, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determined that West Virginia had come into compliance. In any case, if, six months after application of the first sanction, West Virginia still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves West Virginia's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date West Virginia has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of West Virginia, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that West Virginia has come into compliance. In all cases, if, six months after EPA applies the first sanction, West Virginia has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if West Virginia has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to West Virginia's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for West Virginia upon interim approval expiration.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section

112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of West Virginia's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated. This program for delegations only applies to sources covered by the Part 70 program.

Additionally, EPA is promulgating approval of West Virginia's 45CSR30 operating permits program, 45CSR13 and 45CSR14 preconstruction permit programs, and authority under W. Va Code § 22-5-4(a)(5) to issue administrative orders, under the authority of Title V and Part 70 for the purpose of implementing section 112(g) if necessary during the transition period between promulgation of the federal section 112(g) rule and adoption of state rules to implement EPA's section 112(g) regulations. However, since this approval is for the purpose of providing a mechanism to implement section 112(g) during the transition period, the approval of these mechanisms for this purpose will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. Although section 112(l) generally provides the authority for approval of state air toxics programs, Title V and section 112(g) provide authority for this limited approval because of the direct linkage between implementation of section 112(g) and Title V. Unless the federal section 112(g) rule establishes a specific timeframe for the adoption of state rules, the duration of this approval is limited to 24 months following promulgation by EPA of section 112(g) regulations, to provide West Virginia with adequate time to adopt regulations consistent with federal requirements.

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

EPA has determined that this final interim approval action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action, promulgating interim approval of West Virginia's operating permits program, approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 8, 1995.

Stanley L. Laskowski,

Acting Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding the entry for West Virginia in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

West Virginia

(a) Department of Commerce, Labor and Environmental Resources: submitted on November 12, 1993, and supplemented by the Division of Environmental Protection on August 26 and September 29, 1994; interim approval effective on December 15, 1995; interim approval expires December 15, 1997.

(b) (Reserved)

* * * * *

[FR Doc. 95-28211 Filed 11-14-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[NC-95-01; FRL-5332-2]

Clean Air Act Final Interim Approval Of Operating Permits Program; State of North Carolina, Western North Carolina, Forsyth County, and Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: EPA is promulgating interim approval of the operating permit program submitted by the State of North Carolina Department of Health (DEHNR), Western North Carolina Regional Air Pollution Control Agency (WNCRAPCA), Forsyth County Department of Environmental Affairs (FCDEA), and Mecklenburg County Department of Environmental Protection (MCDEP) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: December 15, 1995.

ADDRESSES: Copies of the North Carolina State and local agency submittals and the other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia 30365. Interested persons wanting to examine these documents, contained in EPA docket number NC-95-01, should make an appointment at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. EPA Region 4, 345 Courtland Street NE., Atlanta, GA 30365, (404) 347-3555 extension 4153.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (the Act) and the implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the State or local agency submittals are changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following

Division of Environmental Protection

Public Hearing: Rules 45CSR1, 45CSR6, 45CSR15, 45CSR16, 45CSR23, 45CSR25, 45CSR30 and 45CSR34 **Time/Date:** 8/14/2000 6:00p

	NAME	ADDRESS	COMMENT YES	COMMENT NO
1.	Tina Adams	Flexsys		X
2.	Kim Brown Poland	Robinson + McElwee LLP	X	
3.	Liz Appel	Robinson & McElwee LLP		X
4.	Dave Yaussy	Robinson & McElwee LLP		X
5.	Kathy G. Beckett	Jackson + Kelly / WV Chamber		
6.	[illegible]	Charleston Gazette		X
7.	David M Flannery	Jackson + Kelly		X
8.	Tim Mallon	AEP-WV		X
9.	Lisa McClung	OAQ		X
10.	Karen Watson	"		X
11.				
12.				
13.				
14.				
15.				

ORIGINAL

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

In the matter of:

PUBLIC HEARING ON PROPOSED LEGISLATIVE RULE

45 CSR 30 - **"Requirements for Operating Permits.**

Transcript of proceedings had at a public hearing in the above-styled matter taken by Missy L. Young, Certified Court Reporter and Commissioner in and for the State of West Virginia, at the West Virginia Division of Environmental Protection, Office of Air Quality, Conference Room, 7012 MacCorkle Avenue, S.E., Charleston, West Virginia, commencing at 6:03 p.m., on the 14th day of August 2000, pursuant to notice.

Missy L. Young, C.C.R.
Post Office Box 13221
Sissonville, WV 25360
(304) 984-2300 or 540-8179

P R O C E E D I N G S

MS. CHANDLER:

The purpose of this public hearing is to accept comments on 45CSR30 - "Requirements for Operating Permits." This rule establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act (CAA) and 40 CFR Part 70.

The operating permits program is directed toward major sources and sources as defined in the rule, and contains the following: requirements for permit applications; monitoring and reporting requirements; annual fees to cover all reasonable costs required to develop and administer the program; provisions for public participation; provisions to revise permits consistent with new standards; and operational flexibility within the provisions. These elements have been further refined and defined under the provisions of Title V and 40 CFR Part 70. The purpose of revising the rule is to make various minor corrections and to correct deficiencies, as specified in 60 Federal Register 57352, November 15, 1995 and obtain full approval of the operating permits program by meeting all requirements of Title V and 40 CFR Part 70. In addition, the revisions will comport with recent

federal regulations pursuant to section 112(g) of the Clean Air Act deleting the Requirements to do a case-by-case technology-based standard for existing sources which modify their facilities.

The provisions of Title V of the Clean Air Act required that all states submit to U.S. Environmental Protection Agency (EPA) a comprehensive permit program (including effective regulations) on or before November 15, 1993. West Virginia submitted its operating permits program under 45CSR30 on November 12, 1993. On November 15, 1995, U.S. EPA granted the State interim approval of its operating permit program. To obtain full approval, the State must submit to the U.S. Environmental Protection Agency Program revisions to correct all deficiencies that cause the Operating Permit Program to receive interim approval. Such submittal must be made no later than 6 months prior to the expiration of interim approval, or by June 1, 2001. (Interim approval will expire on December 1, 2001).

Failure to fully meet the requirements of 40 CFR 70 before expiration of the interim approval may result in sanctions pursuant to 42 United State Code 7509(b) and replacement of the State's operating permits program with a federal operating permits program pursuant

to 40 CFR Part 71. Sanctions may include prohibitions on the approval by the Secretary of Transportation of any projects or grants (highway sanctions) and/or emissions offsets for new or modified sources of emissions units requiring at least a two (2) to one (1) offset. Along with revisions made to West Virginia Code SS22-5-6 in 1999, the proposed revisions to this rule will ensure U.S. Environmental Protection Agencies' full approval of the state's operating permits program.

Upon authorization and promulgation of revisions to 45CSR30, the rule will be submitted to the U.S. Environmental Protection Agency for full approval of the State's Operating Permit Plan under Title V of the federal Clean Air Act.

The floor is now open for public comment.

There being nothing further, this public hearing for 45CSR30 is concluded.

(WHEREUPON, the public hearing was concluded.)

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

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

I, the undersigned, Missy L. Young, a Certified Court Reporter and Commissioner within and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings had in the aforementioned matter.

Given under my hand and official seal this 22nd day of August, 2000.

Missy L. Young

Certified Court Reporter
Commissioner for the State of West Virginia

My commission expires April 15, 2008.

From: "John J Mentink" <John.J.Mentink@USA.dupont.com>
To: DEP_EMAIL.OAQANX_PO(J_WHITE)
Date: Fri, Aug 4, 2000 9:52 AM
Subject: Comments on Proposed Regulations - 45 CSR 30

I have consolidated my comments concerning the proposed regulation into one note. For ease of filing I will send all the comments directed at a single rule in one message where appropriate.

Regulation 30 [45 CSR 30]

Comment One:

For the sake of continuity I would recommend that the definition of Hazardous Air Pollutant found in 45 CSR 30.2.24 be amended to automatically reflect changes as issued by the EPA. Words to the effect " "Hazardous Air Pollutant" means any substance listed on table 45-30A or as found in table two of 40 CFR 63.Subpart F."

Comment Two:

We would also recommend adding the phrase "except in a de minimus quantity" to the definition of research and develop facility found in 45 CSR 30.2.37. This would duplicate the verbiage found in neighboring states and allow very limited production of Commerical development materials that could be sold. Note that the current language does not allow this despite the necessity of such facilities for commercial development of new products. The recommended language is as follows:

"Research and Development facility" means sources whose activities are conducted for non-profit scientific or educational purposes; sources whose activities are conducted to test more efficient production processes or methods for preventing or reducing adverse environmental impacts, provided that such activities do not include the production of an intermediate or final product for sale or exchange for commercial profit - except in a de minimus quantity; a research or laboratory facility, the primary purpose of which is to conduct research and development into new processes and products, that is operated under the close supervision of technically trained personnel, and is not engaged in the manufacture of products for sale or exchange for commercial - except in a de minimus quantity; or the experimental firing of any fuels or combinations of fuels in a boiler, heater, furnace, or dryer for the purpose of conducting research and development of more efficient combustion or more effective prevention or control or air pollutant emissions, provide the heat generated is not used for production purposes of for producing a product for sale or exchange for commercial profit.

Comment Three:

I do not see any additional listing of insignificant sources that may have been developed by the Director. I was of the understanding that we already a list of insignificant sources and I am commenting here to insure that the previous list was not lost without some discussion. Since it is not with the remainder of the rule I am assuming that it did not meet with the

approval of the EPA and it was being deleted. If this is true then we should be given the reason for the deletion of the insignificant listing. The current [this copy of the rule] has only the limited list contained in 45 CSR 30.3.2(d) and not the expanded list that the Director has already approved. It also appears that the requirements around insignificant sources are in conflict since under section 3.2.e claims that sufficient information must be submitted to the director to prove sources are insignificant [like the emission rate] while section 4.3.c.1 claims that emissions must be shown for all sources in the permit application EXCEPT those sources deemed insignificant emission units under section 3.2.d.

Comment Four:

Table 45-30A still lists Caprolactam [CAS# 105602] as a Hazardous Air Pollutant [HAP] despite it being off the EPA list for several years. In this revision of the regulation we need to have the official HAP listing contained in the rule to reflect, as accurately as possible, the current listing of the rule. Caprolactam should be removed from list as well as any other chemical that has been delisted from the HAP list using the official procedures established by the EPA.

Comment Five:

The relocation of the text "May include categories of VOCs which in the Director's discretion can be substituted for one another in a production process" from under the section concerning emissions trading to alternative operating scenarios [section 5.1.j.4 relocated to section 5.1.i.4] would indicate that rather than allowing the substitution of VOCs under emissions trading - where a group of VOCs would be traded for another group - the proposed rule requires the construction of an alternative scenario of operation to cover any such change in operation. This seems to indicate an inconsistency in that while under emissions trading VOC may be traded for VOC - under alternative scenarios a new selection of VOC may not be substituted for the old one without the registration of the new "alternative" scenario listing the emissions for such a change. This is considered to be a restriction of the flexibility of operations that is occurring without an accompanying environmental benefit. We have not restricted the trading of VOCs by saying one is different than the other [with respect to materials that are classed only as VOCs] but we have restricted the introduction of them into operating systems. We should keep the definition such that a consistency of treatment is given to the members of a pollutant class with a rule and not single out a material solely because it has a specific use in a chemical process.

Comment Six:

Under the terms for certification of compliance found in section 5.3.e.3 it appears that the certification document will require the identification of all applicable requirements and the individual noting of compliance with each one. This will generate a huge document for the larger chemical facilities. It would require significantly less file space and be more understandable to the average person if the following verbiage was used:

"The facility is in compliance with all applicable terms and conditions of the permit with the exception of the following:"

This would reduce the reporting and paper burden on the source while increasing the emphasis and focus on those places where compliance was lacking.

Comment Seven:

Under Section 5.8 - "Operational Flexibility" the changes in operation of the facilities require a 7 day advance notification to the EPA of a change from one scenario to another. Even under the expedited format of this section notification is required to the appropriate agency after every change. From a practical standpoint an alternative means of documenting the scenario under which the plant operates should be provided. Requiring the source to keep available records that document the scenario under which the facility operated - including the amount of time spent in the operation under a particular scenario - would decrease the un-necessary stream of letters and notices between the agency and the owner / operator of the facility.

CC: "D Susan Wedekind" <D-SUSAN.WEDEKIND@usa.dupont.co...

Comments of the
WEST VIRGINIA MANUFACTURERS ASSOCIATION
regarding the
REVISIONS TO AIR QUALITY REGULATION
45 C.S.R. 6,15,25 and 30

August 14, 2000

I. Introduction

The West Virginia Manufacturers Association (WVMA) is an organization devoted to the advancement of manufacturing interests and related businesses in West Virginia. The WVMA frequently offers comments on rules and regulations that are of interest to its members. The revisions to several rules found in Title 45 of the Code of state Regulations may have an effect of WVMA members, and warrant the following comments.

II. COMMENTS

A. 45 C.S.R. 6 (To Prevent and Control Air Pollution from the Combustion of Refuse)

We support the exemption from minor source permitting that the Office of Air Quality has proposed for temporary flares. We would urge that all flares be exempt from permitting if they do not qualify as a stationary source or a modification. Flares are air pollution control and safety devices that should be encouraged, not treated more stringently than other sources of air pollutants by requiring them to be permitted in all instances.

We oppose the requirements that are imposed on temporary flares in Section 6 of the rule, other than the requirement that they not qualify as stationary sources. We also oppose the new language in Section 4.3 incorporating 40 C.F.R. 60.18(c)(1), which would prohibit visible emissions other than 5 minutes every 2 hours. This is a new, more stringent standard for those flares that are

not affected by New Source Performance Standards, and there is no reason to impose it on existing flares or flares that are not regulated by NSPS.

B. 45 C.S.R. 15 (Emission Standards for Hazardous Air Pollutants Pursuant to 40 C.F.R. Part 61)

We support changes to the rule that leave greater discretion in the hands of the Director. The authority granted to the Director, rather than the Administrator, under Section 5.1.a is significantly changed. The old version allows the Administrator to retain authority over waivers of compliance and monitoring requirements. The new version gives the Director full authority over waivers of compliance, except where they involve alternative means of emission limitations, alternative control technology or alternate test methods and certain other elements. The new version also gives the Director full authority over monitoring requirements except alternative monitoring methods, waivers/ adjustments to record keeping and recording, emissions averaging and applicability determinations. We urge the Director to obtain this type of authority wherever possible.

C. 45 C.S.R. 25 (To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities)

Because the Office of Air Quality shares oversight of hazardous waste facilities with the Office of Waste Management, it is somewhat difficult to evaluate where the lines of authority are drawn. This is, to a great degree, inherent in the nature of dual authority, and is not a criticism of the two agencies. However, it might be possible to make the respective responsibilities of the two agencies a little clearer. For example, Section 1.5 of 45 C.S.R. 25 appears to incorporate by reference all of 33 C.S.R. 20, the Hazardous Waste Management Regulations. Does the OAQ thereby gain the same authority to regulate and interpret the provisions of that rule as has the Office of Waste Management? This sort of cross-reference leaves the regulated community with some

confusion as to which agency is responsible, and has authority for, which aspects of hazardous waste management. Table 25-A is helpful in this regard, but there are potentially conflicting requirements with regard to penalties, notifications and procedures. The DEP might consider revamping the two rules to clarify these points, or perhaps publishing a guidance explaining how it will coordinate the two rules.

The reference to 40 C.F.R. 270.42(j) should be amended, perhaps to (i), because no subsection (j) exists.

D. 45 C.S.R. 30 (Requirements for Operating Permits)

The OAQ has proposed changes to the Title V permitting rule, 45 C.S.R. 30, in order to address the deficiencies identified in EPA's November 15, 1995 Notice of Final Interim Approval for the West Virginia Operating Permits Program (60 *Fed. Reg.* 57352). One aspect of the OAQ's rule that did not receive final approval was Section 3.2.d, because 3.2.d.M (now Section 3.2.d.13) allowed the Director to identify insignificant sources or activities other than those specifically listed in Section 3.2.d. EPA objected to this because "EPA has no way to evaluate such activities against the criteria [for determining insignificance]. Furthermore, this provision allows new exemptions from permit requirements to be granted without prior EPA approval, an approach which is inconsistent with the requirements of [40 C.F.R. §70.5(c)]." 60 Fed. Reg. 57353 (November 15, 1995).

EPA's objection to Section 3.2.d.13 is mystifying given EPA's statement that it "has proposed to allow the Chief to determine on a permit-by-permit basis and within bounds approved by EPA as part of West Virginia's program additional activities to be considered as insignificant."

Id. Furthermore, EPA concedes that 40 C.F.R. §70.5 "allows permitting authorities to recognize certain activities as being clearly trivial (i.e., emissions units and activities which do not in anyway implicate applicable requirements) and that such trivial activities can be omitted from the permit application even if not included on a list of insignificant activities approved in a state's Part 70 program. Permitting authorities may, on a case-by-case basis and without EPA approval, exempt additional activities which are clearly trivial." *Id.* These sorts of case-by-case determinations of insignificance or triviality were clearly what was intended by Section 3.2.d.13.

WVMA understands the OAQ's desire to eliminate EPA's objection to 45 C.S.R. 30-3.2.d.13, however irrational it may seem. However, we believe that the OAQ has gone further than necessary. Section 3.2.e now provides that "units or activities deemed insignificant shall be identified in the permit applications with sufficient information for the Director verify that such units or activities are insignificant." In other words, rather than being able to rely upon the list of insignificant activities in the rule, an applicant must now describe them in the permit application in order to qualify for relief from permitting requirements. This is burdensome and is not what the federal rule requires. Only those emissions units that are exempted because of size or production rate need be listed in the permit application. *See* 40 C.F.R. 70.5(c). Those emissions units that fall into the insignificant source categories that have been approved in Section 3.2.d of the state rule need not be listed on permit applications because their exemption is not conditioned on size or production rate. We suggest that the last sentence of Section 3.2.e be deleted or, in the alternative, be amended to read: "Units or activities designated as insignificant by the Director pursuant to Section 3.2.d.13 of this rule because of their size or production rate shall be identified in the permit application."

Section 3.2.d should be revised as follows: "The following units or activities within a stationary source to this rule shall be deemed to be insignificant:"

III. CONCLUSION

The WVMA appreciates this opportunity to offer comments on the foregoing rules, and hopes that its suggestions for changes will be adopted by the Office of Air Quality

Submitted August 14, 2000.

Karen S. Price, President
West Virginia Manufacturers Association

45CSR30

REQUIREMENTS FOR OPERATING PERMITS

RESPONSE TO COMMENTS

On August 14, 2000 the Office of Air Quality (OAQ) held a public hearing to accept oral comments on proposed changes to 45CSR30 - "Requirements for Operating Permits." The Division of Environmental Protection, Office of Air Quality (OAQ) received written comments on the rule from the West Virginia Manufacturers Association and John J. Mentink. The OAQ has summarized these comments and provides the following response.

I. Commenter: West Virginia Manufacturers Association

COMMENT *Subdivision 3.2.d. and 3.2.e., Insignificant Units or Activities*

The commenter states that the OAQ has gone further than necessary in its attempt to eliminate EPA's objection regarding the insignificant activity list in sections 3.2.d and 3.2.e of the rule. The proposed rule language requires that an applicant describe the insignificant activities in the permit application rather than being able to rely upon the list as stated in the rule. This is burdensome and not what the federal rule requires. Only those units exempted because of size or production rate need be listed in the application. The commenter suggested deletion of the last sentence in 3.2.e or alternative language limiting identification of activities to those limited by size or production rate.

RESPONSE OAQ points out that the current rule requires that all insignificant units and activities be identified in the permit application. The commenter suggests this is unnecessary and a source need only be on the list in the rule to qualify as insignificant. OAQ believes, however, it is helpful for all insignificant activities to be identified in the application so that it can verify the requirement that emissions from insignificant activities be considered in determining whether a source is a major source and thus subject to 45CSR30. (See language in current §3.2.e of the rule.) Furthermore, many of the activities and units listed in the rule, both expressly and under the omnibus authority in paragraph 3.2.d.13., involve some amount of review or evaluation by the agency before it can agree that such activity is indeed insignificant.

OAQ does, however, agree with the commenter that not all items on the list must be further described in the application. Some activities are clearly defined and need no further review by the agency. However, as the commenter readily concedes, some activities will necessitate a review to verify that the size of the activity or production rate has not been exceeded. In addition to size and production rate, OAQ believes both the amount of

pollutant and the concept of applicable requirements must be included in the rule to always require additional descriptive information in the application. Indeed, EPA has clearly stated that it is necessary to ensure that none of the activities or units deemed insignificant be ones for which applicable requirements are implicated.

Although OAQ believes its proposed language generally meets EPA's objection, the approved rule has been modified to recognize that there may be instances when it is sufficient to simply identify a unit or activity in the permit application without providing additional information regarding the activity. The approved rule now reads that the Director may request supplemental information from an applicant regarding the unit or activity, and in the case of units or activities for which size, production rate or amount of pollutant is relevant or in cases where an applicable requirement may be implicated, the applicant is required to submit additional descriptive information at the time of permit application.

II. Commenter: John J. Mentink

COMMENT A. *Definition of Hazardous Air Pollutant*

The commenter recommends that the definition of Hazardous Air Pollutant found in 45 CSR 30.2.24 be amended to automatically reflect changes as issued by the EPA. Words to the effect "Hazardous Air Pollutant" means any substance listed on table 45-30A or as found in table two of 40 CFR 63 Subpart F."

RESPONSE A. Although this issue may bear further discussion at some point in the future, it is beyond the current scope of this rulemaking. In addition, there are other terms in the rule which should be treated in a similar manner, necessitating a more comprehensive review by the OAQ.

COMMENT B. *Definition of Research and Development Facility*

The commenter also recommends adding the phrase "except in a de minimus quantity" to the definition of research and develop facility found in 45 CSR 30.2.37. This would duplicate the verbiage found in neighboring states and allow very limited production of commerical development materials that could be sold. The current language does not allow this despite the necessity of such facilities for commercial development of new products.

RESPONSE B. This comment is beyond the scope of OAQ's limited proposal which is designed to address interim approval deficiencies noted by EPA. The issue of a "de minimus" exception for research and development facilities may be

worthy of further evaluation by the agency and the public at some future time.

COMMENT C. *3.2.d.,3.2.e., and 4.3.c.1., Insignificant Units or Activities*

The commenter does not see any additional listing of insignificant sources that may have been developed by the Director. He was of the understanding that OAQ had a list of insignificant sources and he is commenting to insure that the previous list was not lost without some discussion. The current rule has only the limited list and not the expanded list that the Director has already approved. It also appears that the requirements concerning insignificant sources are in conflict since section 3.2.e states that sufficient information must be submitted to the director to prove sources are insignificant while section 4.3.c.1 claims that emissions must be shown for all sources in the permit application except those sources deemed insignificant emission units under section 3.2.d.

RESPONSE C. The commenter is correct that EPA has approved additional activities as insignificant under the omnibus authority in section 3.2.d.13, and OAQ is using this list in its implementation of the program. While it may be appropriate to consider including the entire list in the rule at some point in the future, OAQ believes that such action is beyond the scope of this limited rule revision. Regarding the inconsistency between subdivision 3.2.d. and paragraph 4.3.c.1., OAQ agrees and has added language in paragraph 4.3.c.1. to refer to subdivision 3.2.d.

COMMENT D. *Caprolactam Delisted*

Table 45-30A still lists Caprolactam [CAS# 105602] as a Hazardous Air Pollutant [HAP] despite its being off the EPA list for several years. In this revision of the regulation the commenter believes the official HAP listing should reflect, as accurately as possible, the current listing in the federal rule. Caprolactam should be removed from the list as well as any other chemical that has been delisted from the HAP list using the official procedures established by the EPA.

RESPONSE D. OAQ concurs and will make the correction.

COMMENT E. *Emissions Trading/Voc's*

The relocation of the text "May include categories of VOCs which in the Director's discretion can be substituted for one another in a production process" from under the section concerning emissions trading to alternative operating scenarios [section 5.1.j.4 relocated to section 5.1.i.4] would indicate

that rather than allowing the substitution of VOCs under emissions trading - where a group of VOCs would be traded for another group - the proposed rule requires the construction of an alternative scenario of operation to cover any such change in operation. This seems to indicate an inconsistency in that while under emissions trading VOC may be traded for VOC - under alternative scenarios a new selection of VOC may not be substituted for the old one without the registration of the new "alternative" scenario listing the emissions for such a change. This is a restriction of the flexibility of operations that is occurring without an accompanying environmental benefit.

RESPONSE E. OAQ agrees with the commenter that placing the subject language under the alternative operating scenario may be too limiting, and upon further evaluation of the issue, believes that such language is altogether unneccessary in this rule. Therefore, OAQ is deleting the language from the rule which was one of the options suggested by EPA. By removing the language, the issue of VOC trading will be dealt with on a case-by-case basis in permitting decisions where OAQ must consider whatever state and federal rules are in effect. One example of a rule which may apply to such a situation is OAQ's new rule governing emissions trading, 45CSR28.

COMMENT F. *5.3.e.3., Compliance Certifications*

Under the terms for certification of compliance found in section 5.3.e.3 it appears that the certification document will require the identification of all applicable requirements and the individual noting of compliance with each one. This will generate a huge document for the larger chemical facilities. It would require significantly less file space and be more understandable to the average person if the following verbiage was used:

> "The facility is in compliance with all applicable terms and conditions of the permit with the exception of the following:"

RESPONSE F. The requirement to identify each term or condition of the permit that is the basis of the certification is taken from the federal counterpart regulations and OAQ believes it is necessary to meet the requirements of 40 CFR Part 70 in order to obtain full approval of the program. In addition, the issue raised by the commenter is clearly beyond the scope of the limited revisions necessary at this point in time.

COMMENT G. *Subsection 5.8, Operational Flexibility*

Under Section 5.8 - "Operational Flexibility" the changes in operation of the facilities require a 7 day advance notification to the EPA of a change from one

scenario to another. Even under the expedited format of this section notification is required to the appropriate agency after every change. From a practical standpoint an alternative means of documenting the scenario under which the plant operates should be provided. Requiring the source to keep available records that document the scenario under which the facility operated, including the amount of time spent in the operation under a particular scenario, would decrease the unnecessary stream of letters and notices between the agency and the owner/operator of the facility.

RESPONSE G. The requirement to provide a 7 day advance notification is taken from the federal counterpart regulations and OAQ believes it is necessary to meet the requirements of 40 CFR Part 70 in order to obtain full approval of the program. In addition, the issue raised by the commenter is clearly beyond the scope of the limited revisions necessary at this point in time.