

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

JUN 24 4 41 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Air Pollution Control Commission TITLE NUMBER: 45CSR30

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §16-20-5

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 45CSR30

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

DATE OF PUBLIC HEARING: Tuesday, July 6, 1993 TIME: 9:00 a.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality  
Conference Room  
1558 Washington Street, East  
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

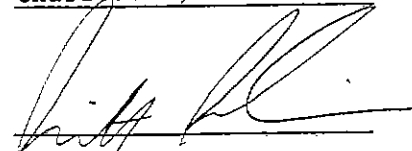
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Britt A. Bernheim, Secretary

Air Pollution Control Comm.  
1615 Washington Street, East  
Charleston, WV 25311

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

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

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL.

  
Britt A. Bernheim, Secretary

14:00

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

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next 1993-94	1994-95
Estimated Total Cost	\$3,314,000	\$-----	\$2,140,000	\$4,363,000	\$5,454,000
Personal Services	2,523,000	-----	1,404,000	3,142,000	3,927,000
Current Expense	742,000	-----	458,000	960,000	1,200,000
Repairs and Alterations	66,000	-----	43,000	87,000	109,000
Equipment	-----	-----	235,000	174,000	218,000
Other	-----	-----	-----	-----	-----

2. Explanation of above estimates:

The above estimates for required program funding in 1994-95 are based upon the presumptive funding requirement of \$25/ton of regulated air pollutant emissions set forth in the 1990 Clean Air Act Amendments. The 1993-94 level is a ramp-up funding level set at 80% of the 1994-95 level. The current funding estimate is based upon the FY92-93 appropriation to the air program and an estimate that 60% of total current air program costs are associated with sources that will be required to have Title V operating permits.

3. Objectives of these rules:

4. Explanation of overall economic impact of proposed rule.

A. Economic impact on state government.

Implementation of the mandated new Title V operating permit program in conjunction with other new rules required by the federal Clean Air Act will have a substantial impact on the State's air quality management program shown in the prior table.

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


Under the \$25/ton presumptive funding requirement of Title V (federal Clean Air Act) industries subject to the new permit requirements will be required to pay total fees to the air program of approximately \$5,454,000 per year. Permit application preparation and submission costs would be an additional impact on these businesses.

C. Economic impact on citizens/public at large.

Minimal impact anticipated as a result of permit costs passed on to citizens at large.

Date:                     1993                    

Signature of agency head or authorized representative:

  
G. Dale Farley  
Chief, Office of Air Quality

## 45CSR30

### SUMMARY

45CSR30 - "Requirements for Operating Permits" is a proposed new rule to provide for the establishment of a comprehensive air quality permitting system consistent with the requirements of Title V of the Clean Air Act Amendments of 1990. (42 U.S.C. 7401, et seq.) The provisions of Title V (42 U.S.C. 7661 through 7661f) provide that all states submit to U. S. EPA a comprehensive permit program (including effective regulations) on or before November 15, 1993. The specific requirements of such an operating permit program are primarily contained in Title V and 40CFR70.

The operating permit program is directed toward major sources and sources as defined in the rule, and must contain the following: requirements for permit applications; monitoring and reporting requirements; annual fees to cover all reasonable costs required to develop and administer the program; adequate personnel and funding to administer the program; adequate authority for the agency to administer the program; adequate, streamlined, and reasonable procedures, including public comment and hearing; provisions to ensure against unreasonable delay by the permitting authority by allowing judicial review of untimely actions; adequate 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 40CFR70.

Failure to submit a Title V operating permit program would result in sanctions pursuant to 42 U.S.C. 7509(b). Such 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 two (2) to one (1).

This rule will be submitted to U. S. EPA as the key part of the requirement for the Title V operating permit program. In addition, the rule establishes a method by which sources can agree to limit their potential to emit and become a conditioned minor source. Such a source would have a permit that is federally enforceable, but this source would not be subject to all Title V requirements.

FILED

45CSR30

JUN 2 4 42 PM '93

TITLE 45  
LEGISLATIVE RULES  
AIR POLLUTION CONTROL COMMISSION

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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 subchapter V of the Clean Air Act (42 U.S.C. 7401 et seq.). Further, this rule provides for a transition period prior to the implementation of the permitting system.

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

1.3. Filing Date. --

1.4. Effective Date. --

§45-30-2. Definitions.

2.1. "Affected source" means a source that includes one or more affected units under subchapter IV Acid Deposition Control of the Clean Air Act.

2.2. "Affected states" are all States:

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

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

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

2.4. "Air pollution", 'statutory air pollution' has the meaning ascribed to it in article twenty, chapter sixteen, of the W.Va. Code, as amended.

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

a. Any standard or other requirement provided for in the state implementation plan approved 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;

45CSR30

b. Any term or condition of any pre-construction 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;

c. Any standard or other requirement under 42 U.S.C. 7411 of the Clean Air Act, including 42 U.S.C. 7411(d);

d. Any standard or other requirements under 42 U.S.C. 7412 of the Clean Air Act, including any requirement concerning accident prevention under 42 U.S.C. 7412(r)(7) of the Act, but not including the contents of any risk management plan required under 42 U.S.C. 7412(r) of the Act;

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;

f. Any requirements established pursuant to 42 U.S.C. 7661c(b) or 42 U.S.C. 7414(a)(3) of the Clean Air Act;

g. Any standard or other requirement governing solid waste incineration under 42 U.S.C. 7429 of the Clean Air Act;

h. Any standard or other requirement for consumer and commercial products under 42 U.S.C. 7511b(c) of the Clean Air Act;

i. Any standard or other requirement for tank vessels under 42 U.S.C. 7511b(f) of the Clean Air Act;

j. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless the Commission determines that such requirements need not be contained in a Title V permit;

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 42 U.S.C. 7661c(e) of the Clean Air Act;

l. Any emissions cap and related requirements established for the source by agreement with the Chief or otherwise; and

m. Any standards imposed by the provisions of 45CSR4 and 45CSR27.

45CSR30

2.6. "Area source" means any non-major source subject to a standard or other requirement under 42 U.S.C. 7411 or 42 U.S.C. 7412.

2.7. "Chief of Air Quality" or "Chief" means the chief of the Office of Air Quality or his or her designated representative appointed by the director of the Division of Environmental Protection pursuant to the provisions of W. Va. Code §22-1-1, et seq.

2.8. "Clean Air Act" ("CAA") means 42 U.S.C. 7401, et seq.

2.9. "Commission" means the West Virginia Air Pollution Control Commission.

2.10. "Conditioned minor source operating permit" means a permit issued pursuant to section eleven of the rule.

2.11. "Construction" means the fabrication, erection, or installation of a source. For the purposes of this regulation, an expansion of an existing source which increases the amount of any discharge or results in any new discharge shall be considered construction.

2.12. "Director" means the director of the Division of Environmental Protection or his or her designated representative.

2.13. "Division of Environmental Protection" or "DEP" means that division of the Department of Commerce, Labor, and Environmental Resources 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 Chief 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.

45CSR30

2.17. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any air pollutant. This term is not meant to alter or affect the definition of the term "affected unit" for purposes of subchapter IV Acid Deposition Control of the Clean Air Act.

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

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

2.20. "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.

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

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

2.23. "Maximum achievable control technology" or "MACT" means an emissions limitation requiring the application of the maximum degree of reduction and control which the Chief, on a case-by-case basis, determines is achievable for each hazardous air pollutant pursuant to the provisions of subsections 13.1, 13.2, and 13.3 of this rule.

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

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

A. The average emission limitation achieved by the best performing twelve (12) percent of the existing sources in the United States (for which the Chief has or can reasonably obtain emissions information), excluding those sources that have achieved a level of emission rate or emission reduction which complies, or would

45CSR30

comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in 42 U.S.C. 7501) applicable to the source category and prevailing at the time, within a category or subcategory with thirty (30) or more sources; or

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

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

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

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

B. Enclose or seal equipment or systems to eliminate hazardous air pollutant emissions;

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

D. Are work practice or operational methods;

E. Are a combination of the above.

2.24. "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 2.24.a, 2.24.b, or 2.24.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.

a. A major source under 42 U.S.C. 7412 of the Clean Air Act, which is defined as:

A. 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 42 U.S.C. 7412(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.

B. Radionuclides. In the event the Commission obtains regulatory authority to implement federal requirements regarding radionuclides, the Commission shall define "major source" consistent with the federal requirements.

b. A major stationary source of air pollutants, as defined in 42 U.S.C. 7602 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 Commission). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of 42 U.S.C. 7602(j) of the Clean Air Act, unless the source belongs to one of the following categories of stationary sources:

- A. Coal cleaning plants (with thermal dryers);
- B. Kraft pulp mills;
- C. Portland cement plants;
- D. Primary zinc smelters;

45CSR30

- E. Iron and steel mills;
- F. Primary aluminum ore reduction plants;
- G. Primary copper smelters;
- H. Municipal incinerators (or combination thereof) capable of charging more than fifty (50) tons of refuse per day;
- I. Hydrofluoric, sulfuric, or nitric acid plants;
- J. Petroleum refineries;
- K. Lime plants;
- L. Phosphate rock processing plants;
- M. Coke oven batteries;
- N. Sulfur recovery plants;
- O. Carbon black plants (furnace process);
- P. Primary lead smelters;
- Q. Fuel conversion plants;
- R. Sintering plants;
- S. Secondary metal production plants;
- T. Chemical process plants;
- U. Fossil-fuel boilers (or combination thereof) totaling more than 150 million British thermal units per hour heat input;
- V. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- W. Taconite ore processing plants;
- X. Glass fiber processing plants;
- Y. Charcoal production plants;
- Z. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
- AA. Ammonium sulfate manufacturing plants;
- BB. Asphalt concrete plants;
- CC. Asphalt processing/roofing manufacturing plants;
- DD. Bulk gasoline terminals;
- EE. Dry cleaning plants;
- FF. Glass manufacturing plants;
- GG. Grain elevators;

45CSR30

- HH. Graphic arts (rotogravure) plants;
- II. Hazardous waste incineration facilities;
- JJ. Lead-acid battery manufacturing plants;
- KK. Mineral processing plants;
- LL. Natural gas processing facilities;
- MM. Phosphate fertilizer production and storage facilities;
- NN. Rubber tire manufacturing plants;
- OO. Sewage treatment plants;
- PP. Synthetic fiber production plants;
- QQ. Surface coating and printing operations; and
- RR. All other stationary source categories regulated by a

standard promulgated under 42 U.S.C. 7411 or 7412 of the Clean Air Act, but only with respect to those air pollutants that have been regulated for that category.

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

A. 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 ( $\text{NO}_x$ ) 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 42 U.S.C. 7511(f)(1) or (2) of the Clean Air Act, that requirements under section 42 U.S.C. 7511(f) of the Clean Air Act do not apply;

B. For ozone transport regions established pursuant to 42 U.S.C. 7511c of the Clean Air Act, sources with the potential to emit fifty (50) tons or more per year of volatile organic compounds (VOCs);

C. 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;

45CSR30

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

2.25. "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.

2.26. "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.

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

2.28. "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.

2.29. "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 subchapter IV Acid Deposition Control of the Clean Air Act or the regulations promulgated thereunder.

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

2.31. "Regulated air pollutant" means the following:

- a. Nitrogen oxides (NO<sub>x</sub>), any volatile organic compound, or particulate matter;
- b. Any pollutant for which a national ambient air quality standard has been promulgated;

45CSR30

c. Any pollutant that is subject to any standard promulgated under 42 U.S.C. 7411 of the Clean Air Act;

d. Any Class I or II substance subject to a standard promulgated under or established by subchapter VI of the Act (42 U.S.C. 7671a). (See Table 45-30B for a listing of Class I and II substances regulated pursuant to this rule.);

e. Any pollutant subject to a standard promulgated under 42 U.S.C. 7412 or other requirements established under 42 U.S.C. 7412 of the Clean Air Act, including sections 7412(g), (j), and (r), including the following:

A. Any pollutant subject to requirements under 42 U.S.C. 7412(j) of the Clean Air Act. If the U.S. EPA fails to promulgate a standard by the date established pursuant to section 42 U.S.C. 7412(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 42 U.S.C. 7412(e) of the Clean Air Act.

B. Any pollutant for which the requirements of section 42 U.S.C. 7412(g)(2) of the Clean Air Act have been met, but only with respect to the individual source subject to the 42 U.S.C. 7412(g)(2) requirement.

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

2.32. "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:

a. Carbon monoxide provided that emissions of carbon monoxide do not fall under the provisions of subparagraph 2.24.c.C;

b. Any Class I or II substance which is a regulated air pollutant solely because it is listed pursuant to 42 U.S.C. 7671a of the Clean Air Act (See Table 45-30B for a listing of Class I and Class II substances) or;

c. Any pollutant that is a regulated air pollutant only because it is subject to a standard or regulation under 42 U.S.C. 7412(r) of the Clean Air Act.

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

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

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

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 Chief;

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

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, 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 EPA); or

d. For affected sources:

A. The designated representative in so far as actions, standards, requirements, or prohibitions under subchapter IV [Acid Deposition Control] of the Clean Air Act or the regulations promulgated thereunder are concerned; and

B. The designated representative for any other purposes under this legislative rule.

2.36. "Section 502(b)(10) [CAA] 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.

2.37. "Source" or "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

2.38. "Title V operating permit" means a permit, other than a conditioned minor source permit, issued under the provisions of this rule.

2.39. "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-trichloromethane), CFC-113 (trichlorotrifluoroethane), methylene chloride, CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), CFC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentafluoroethane), 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:

- a. Cyclic, branched, or linear, completely fluorinated alkanes;
- b. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- c. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or
- 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 §16-20-1, et seq., and rules of the Commission.

#### §45-30-3. Permits.

##### 3.1. Permit requirement.

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:

- A. Any major source;
- B. Any source, including an area source, subject to a standard or other requirements promulgated under 42 U.S.C. 7411 of the Clean Air Act;
- C. Any source, including an area source, subject to a

standard or other requirements under 42 U.S.C. 7412 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 42 U.S.C. 7412(r) of the Clean Air Act;

- D. Any affected source; and
- E. Any conditioned minor source.

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 until such time as the source obtains a permit as a conditioned minor source under the provisions of section eleven.

3.2. Exemptions.

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 42 U.S.C. §7429(e) of the Clean Air Act may be deferred by the Chief on a specific source category basis from the obligation to obtain a Title V operating permit under this rule for a period of up to 5 years from the effective date of the Title V operating permit program.

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

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

A. 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

B. 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.

3.3. Emissions units and sources.

45CSR30

a. For major sources, the Chief shall include in the permit all applicable requirements for all emissions units in the major source subject to this rule.

b. For any non-major source subject to this rule, the Chief shall include in the permit all applicable requirements for emissions 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.

a. Timely application.

A. Except as otherwise provided, applications for permits shall be submitted in accordance with the following schedule:

(a) Applications for coal preparation plants as defined in 45CFR60.250 and 251, whether major or minor sources, which are subject to performance standards under 40CFR60, subpart Y, and all other coal preparation plants which are major sources shall be submitted to the Chief within ninety (90) days of the effective date of the operating permit program.

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

(c) Applications for all hot mix asphalt plants subject to the requirements of 40CFR60 subpart I including area sources and all hot mix asphalt plants which are major sources shall be submitted to the Chief within ninety (90) days of the effective date of the operating permit program.

(d) Applications for glass manufacturing plants subject to this rule including area sources subject to 40CFR60 subpart CC shall be submitted to the Chief within one hundred eighty (180) days of the effective date of the operating permit program.

45CSR30

(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.

(f) Application for all other stationary sources subject to this rule shall be submitted to the Chief within twelve (12) months of the effective date of the operating permit program.

B. Sources required to meet requirements under 42 U.S.C. 7412(g) of the Clean Air Act, or to have a permit under the pre-construction review program approved into the state implementation plan under part C or D of subchapter I of the Clean Air Act, including 45CSR13, 45CSR14, 45CSR15, and 45CSR19, 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.

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

D. Applications for initial Phase II (as defined in subchapter IV of the Clean Air Act) acid deposition control permits shall be submitted to the Chief by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for NO<sub>x</sub>.

E. Within six (6) months of the last day of the eighteenth (18th) month following the date established by U.S. EPA's failure to timely promulgate a standard in accordance with the requirements of 42 U.S.C. 7412(e) [C.A.A. §112(e)], 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 Chief to process the application on forms to be made available by the Chief.

## 45CSR30

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 Chief 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 Chief 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 as provided for certain permit modifications in subsection 6.5 of this rule. If, during processing an application that has been determined or deemed to be complete, the Chief determines that additional information is necessary to evaluate or take final action on that application, the Chief 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 Chief.

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 §16-20-12 and 45CSR31, the Chief 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 Chief shall provide for a standard application form or forms. Information, as described below, for each emissions unit at a source shall be included in the application. An application shall contain all information necessary to determine the applicability of,

45CSR30

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:

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.

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.

c. The following emissions-related information:

A. 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 are exempted under subsection 3.2 of this rule. The Chief 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.

B. Identification and description of all points of emissions described in subparagraph 4.3.c.A in sufficient detail to establish the basis for fees and applicability of requirements of this rule, W. Va. Code §16-20-1, et seq., and the Clean Air Act.

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

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

E. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

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

45CSR30

G. Other information required by any applicable requirements (including information related to stack height limitations developed pursuant to 42 U.S.C. 7425 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.

H. Calculations or test data on which the information in subparagraphs 4.3.c.A through G above is based.

d. The following air pollution control requirements:

A. Citation and description of all applicable requirements;

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

C. A list of all air quality related permits, pending permit applications, and orders, including all permits or applications for new or modified sources, that have been issued to the applicant by the State or by U.S. EPA.

e. Other specific information that may be necessary to implement and enforce other requirements of the W. Va. Code §16-20-1, et seq. and §20-5E-1, et seq. or the Clean Air Act or to determine the applicability of such requirements.

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

g. Additional information as determined to be necessary by the Chief to define emissions trading scenarios or alternative operating scenarios identified by the source pursuant to paragraph 5.1.i, 5.1.j, or operational flexibility pursuant to subsection 5.8.

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

A. 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:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

45CSR30

(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.

(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.

B. 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 Chief.

C. 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.

i. Requirements for compliance certification, including the following:

A. A certification of compliance with all applicable requirements by a responsible official consistent with subsection 4.4 of this section and 42 U.S.C. 7414(a)(3) of the Clean Air Act;

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

45CSR30

C. 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 Chief; and

D. 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 Commission.

j. The use, where applicable, of nationally standardized forms for subchapter IV 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:

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

A. 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.

B. The permit shall state that, where applicable requirements of the Clean Air Act are more stringent than any applicable requirement of regulations promulgated under subchapter IV Acid Deposition Control of the Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the Chief and U.S. EPA.

45CSR30

C. If the applicable requirements 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. The source shall propose permit terms and conditions to satisfy these requirements in its applications.

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

c. Monitoring and related recordkeeping and reporting requirements:

A. Each permit shall contain the following requirements with respect to monitoring:

(a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to section 42 U.S.C. 7661c(b) or 42 U.S.C. 7414(a)(3) of the Clean Air Act;

(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 period that are representative of the source's compliance with the permit, as reported pursuant to 5.1.c.C 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.A); and

(c) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

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

45CSR30

(a) Records of monitoring information that include the following:

- (A) The date, place as defined in the permit, and time of sampling or measurements.
- (B) The date(s) analyses were performed.
- (C) The company or entity that performed the analyses.
- (D) The analytical techniques or methods used.
- (E) The results of such analyses.
- (F) The operating conditions existing at the time of sampling or measurement.

(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.

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

(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.

(b) Prompt 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. The Chief shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

45CSR30

(c) In addition to monitoring reports required by the permit, prompt submission of supplemental reports and notices as follows:

(A) 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.

(B) Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported to the Chief 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.

(C) 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.

(D) All reports of deviations shall identify the probable cause of the deviation and any corrective actions or preventative measures taken.

(d) Every report submitted under this subsection shall be certified by a responsible official.

(e) A permittee may request confidential treatment for information submitted under this subsection pursuant to the limitations and procedures of W. Va. Code §16-20-12 and 45CSR31.

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

45CSR30

A. 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.

B. 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.

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.

f. Provisions stating the following:

A. 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 Chief or U.S. EPA; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. 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.

C. 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.

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

E. Duty to provide information. The permittee shall furnish to the Chief, within a reasonable time, any information that the Chief 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 Chief copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish such records directly to U.S. EPA along with their claim of confidentiality.

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

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.

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

A. 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.

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

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

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:

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

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

C. Shall meet all applicable requirements and requirements of this part.

5.2. Federally-enforceable requirements.

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 Chief, U.S. EPA, and citizens under the Clean Air Act.

b. Notwithstanding paragraph 5.2.a, the Chief 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.

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

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.

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 Chief or an authorized designee of the Chief to perform the following:

A. 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;

45CSR30

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

C. 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

D. 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.

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

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 Chief. Such progress reports shall contain the following:

A. 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

B. 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.

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:

A. The frequency of submissions of compliance certifications;

B. 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;

C. A requirement that the compliance certification include the following:

(a) The identification of each term or condition of the permit that is the basis of the certification;

(b) The permittee's compliance status as shown by test or monitoring data, records, and other information reasonably available to the permittee;

(c) Whether compliance was continuous or intermittent;

(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

(e) Such other facts as the Chief may require to determine the compliance status of the source;

D. A requirement that all compliance certifications be submitted to U.S. EPA as well as to the Chief; and

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

#### 5.4. General permits.

a. The Chief may, after notice and opportunity for public participation, 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 Chief 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 subchapter IV Acid Deposition Control of the Clean Air Act.

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

A. To establish terms and conditions to implement applicable requirements for a source category;

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

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

45CSR30

D. To establish enforceable caps on emissions from sources in a specified category.

c. Sources that would qualify for a general permit must apply to the Chief 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 Chief may, in the general permit, provide for applications which deviate from the requirements of section four, provided that such applications meet the requirements of subchapter V of the Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit.

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

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

A. 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 general permit will be revoked and reissued under the terms of the source-specific permit for the same permit term.

B. 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 Chief 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

45CSR30

change of location during the term of the permit. Temporary sources must comply with pre-construction review requirements under 45CSR13, 45CSR14, 45CSR15, and 45CSR19. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

- a. Conditions that will assure compliance with all applicable requirements at all authorized locations;
- b. Requirements that the owner or operator notify the Chief at least ten (10) days in advance of each change in location;
- c. Conditions that assure compliance with all other provisions of this section;
- d. Locations and siting of such facilities shall be specified in the permit; and
- e. Public notice as specified in subsection 6.8 shall be given for each site specified in the permit.

5.6. Permit shield.

a. Except as provided in this subsection, the Chief 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:

A. Such applicable requirements are included and are specifically identified in the permit; or

B. The Chief, 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 the determination or a concise summary thereof.

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.

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

A. 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

45CSR30

B. The applicable requirements of the Code of West Virginia and subchapter IV Acid Deposition Control, consistent with 42 U.S.C. 7651g(a) of the Clean Air Act.

5.7. Emergency provision.

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.

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.

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

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

B. The permitted facility was at the time being properly operated;

C. 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

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

45CSR30

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

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

5.8. Operational flexibility. For each permit issued under this rule, the Chief may authorize a permitted facility to make changes within the facility, as provided by 502(b)(10) of the Clean Air Act (42 U.S.C. 7661a(b)(10)). 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 (including 45CSR13, 45CSR14, 45CSR15, or 45CSR19) promulgated by the Commission 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.

a. Before making a change under this provision, the permittee shall provide advance written notice to the Chief 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 Chief shall place a copy with the permit in the public file. The written notice shall be provided to the Chief 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 Chief and U.S. EPA as soon as possible after learning of the need to make the change.

b. A permitted source may trade increases and decreases in emissions within the facility, where applicable requirements 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 Chief.

c. The permit shield provided under section 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:

A. 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

B. If the permittee obtains final approval of a significant modification to the permit to incorporate the change in the permit, nothing in this subsection shall be construed as requiring such modification approval.

d. Upon the request of a permit applicant, the Chief 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 subsection 5.1.j of this rule. The permit shield under section 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

## 45CSR30

modification under any rule promulgated by the Commission without obtaining a modification of its permit. Such changes shall be subject to the following requirements and restrictions:

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

b. The permittee must provide a written notice of the change to the Chief and to U.S. EPA not less than seven (7) days prior to 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.

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

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.

e. No permittee may make, without modification of its permit, a change that would be prohibited by any requirement under Title IV of the Clean Air Act or would be considered construction or modification under any rule promulgated by the Commission or any provision of Title I of the Clean Air Act. All off-permit changes which constitute construction, modification, or relocation of a stationary source which is subject to the provisions of 45CSR13, 45CSR14, 45CSR15, or 45CSR19 must comply with all applicable requirements of those rules.

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

#### 6.1. Action on application.

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

A. The Chief 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;

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

45CSR30

C. The Chief has complied with the requirements for notifying and responding to affected States as required by subsection 7.2 of this rule;

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

E. The Chief 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.

b. Except as provided under the initial transition plan provided for under section nine of this rule, the Chief shall take final action on each complete permit application (including a request for permit modification or renewal) within eighteen (18) months after receiving a complete application.

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

d. The Chief shall promptly provide notice to the applicant of whether the application is complete. Unless the Chief 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. For modifications processed through minor permit modification procedures, pursuant to 6.5.a, no completeness determination need be made.

e. Following receipt and review of an application, the Chief shall issue a draft permit, permit modification or renewal for public comment, in accordance with subsection 6.9. The Chief 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 Chief shall send this statement to the U.S. EPA and to any person who requests it.

f. The submittal of a complete application shall not affect the requirement that any source have all pre-construction permits required under the rules of the Commission.

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

45CSR30

issuance (including for renewal), the source's failure to have a Title V operating permit is not a violation of this rule until the Chief 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 Chief any additional information identified as being needed to process the application.

6.3. Permit renewal and expiration.

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

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.C.

6.4. Administrative permit amendments.

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

A. Corrects typographical errors;

B. 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;

C. Requires more frequent monitoring or reporting by the permittee;

D. Allows for a change in ownership or operational control of a source where the Chief 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 Chief; or

E. Incorporates into the Title V operating permit the requirements from rules authorized under the Commission's pre-construction review program, including 45CSR13, 45CSR14, 45CSR15, and 45CSR19, provided that the issuance of such a pre-construction review permit meets procedural requirements of

sections six and seven that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in section five of this rule.

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

A. The Chief 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 Chief designates any such permit revisions as having been made pursuant to this subsection.

B. The Chief shall submit a copy of the revised permit to the U.S. EPA.

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

c. The Chief 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 for administrative permit amendments made pursuant to subparagraph 6.4.a.E, 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.

a. Minor permit modification procedures.

A. Criteria.

(a) Minor permit modification procedures may be used only for those permit modifications that:

(A) Do not violate any applicable requirement;

(B) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;

45CSR30

(D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement;

(E) Do not involve pre-construction review or modification under 45CSR13, 45CSR14, 45CSR15, and 45CSR19; and

(F) Are not required under any rule by the Commission to be processed as a significant modification.

(b) Notwithstanding part 6.5.a.A.(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 the regulations of the Commission, or which may be otherwise provided for in the Title V operating permit issued under this rule.

B. 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:

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

(b) The source's suggested draft permit;

(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

(d) Completed forms for the Chief to use to notify U.S. EPA and affected states as required under section seven of this rule.

C. EPA and affected states notification. The Chief 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 Chief 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.

45CSR30

D. Timetable for issuance. The Chief 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 Chief that U.S. EPA will not object to the issuance of the permit modification. Within ninety (90) days of the Chief'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 Chief shall:

(a) Issue the permit modification as proposed;

(b) Deny the permit modification application;

(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

(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 Chief shall utilize the same procedures outlined in 6.5.a.D.

E. Source's ability to make change. A permit applicant may not make a change 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 Chief takes any of the actions specified in 6.5.a.D(a) through (d) 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, both the proposed modifications and the existing permit terms and conditions it seeks to modify may be enforced against it.

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

45CSR30

b. Significant modification procedures.

A. 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. A modification shall be considered significant if, in the judgment of the Chief, action on an application for modification would require decisions to be made on significant or complex issues or issues that generate or are likely to generate significant material adverse comment from the public, affected states, or EPA. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping requirements shall be considered significant.

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

6.6. Reopening for cause.

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:

A. Additional applicable requirements under the Clean Air Act or the Commission'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:

(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

(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.

B. Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid deposition control program or other legislative rules of the Commission. Upon approval by U.S. EPA, excess emissions offset plans shall be incorporated into the permit.

C. The Chief 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.

D. The Chief determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

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.

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 Chief at least thirty (30) days in advance of the date that the permit is to be reopened, except that the Chief may provide a shorter time period in the case of an emergency.

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

a. The Chief 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 appropriate. The Chief may request an extension of this ninety (90) day period for an additional ninety (90) days if the Chief finds that a new or revised permit application is necessary or that the Chief must require the permittee to submit additional information.

b. The Chief 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.]

45CSR30

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:

a. Public notice.

A. Scope:

(a) Public notice shall be given that the following actions have occurred:

(A) A draft permit has been prepared.

(B) A hearing has been scheduled under paragraph

6.8.b.

(b) Public notices may describe more than one (1) permit or permit part.

B. Timing:

(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 Chief for good cause shown but in no case may the further extension exceed an additional thirty (30) days.

(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.

C. Methods. Public notice shall be given by the following methods:

(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):

45CSR30

(A) The applicant;

(B) Any other State or Federal agency which the Chief 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;

(C) 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;

(D) Persons on a mailing list developed by:

1. Including those who request in writing to be on the list;

2. Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

3. 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 Chief may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Chief may delete from the list the names of any person who fails to respond to such a request.)

(E) Any unit of local government having jurisdiction over the area where the facility is proposed to be located.

(b) By the Chief publishing the public notice as a Class I legal advertisement in a newspaper in general circulation for the county where the emission will occur.

(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.

D. Contents:

(a) All public notices. All public notices issued under this rule shall contain the following minimum information:

45CSR30

(A) Name and address of the Office of Air Quality;  
(B) 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;

(C) 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;

(D) 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;

(E) A brief description of the comment procedures required by paragraph 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

(F) A description of the location of each existing or proposed emission point. For draft general permits, this requirement will be satisfied by a map or description of the permit area which specifically designates such emission points.

(b) Public notices for hearings. In addition to the requirements of 6.8.a.D.(a) of this section, public notice of a hearing shall contain the following information:

(A) Reference to the date of previous public notices relating to the permit;

(B) Date, time, and place of the hearing; and

(C) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(D) In addition to the general public notice described in part 6.8.a.D.(a) of this legislative rule, all persons identified in subparagraph 6.8.a.C 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.

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. 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 answered as provided in paragraph 6.8.c.

c. Public hearings.

A. The Chief 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 Chief 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.

B. 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 subparagraph 6.8.a.B shall automatically be extended to ten (10) days after the close of any public hearings under this section.

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

D. 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.

d. Reopening of the public comment period.

A. 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 Chief determines to revise any condition of the permit that has been subject to initial public notice, the Chief shall take one (1) or more of the following actions:

(a) Prepare a new draft permit, appropriately modified, under section five of this legislative rule;

(b) Prepare a revised fact sheet under subsection 6.9 and reopen the comment period under this section; or

(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.

B. 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.

e. Response to comments.

A. At the time that any final permit is issued, the Chief shall issue a response to comments. This response shall:

(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

(b) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

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

6.9. Fact sheet.

a. A fact sheet shall be prepared for every draft permit (including general permits) and for every facility or activity subject to this legislative 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 Chief shall send this fact sheet to the applicant and, on request, to any other person and to the persons required under 6.8.a.C.

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

c. The fact sheet shall include, when applicable:

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

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

C. A brief summary of the basis for the draft permit conditions

45CSR30

including references to applicable statutory or regulatory provisions;

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

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

(a) The beginning and ending dates of the comment period under paragraph 6.8.a and the address where comments will be received;

(b) Procedures for requesting a hearing and the nature of that hearing; and

(c) Any other procedures by which the public may participate in the final decision.

F. Name and telephone number of a person to contact for additional information;

G. 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;

H. 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 EPA and Affected States.

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

a. The Chief 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 Chief 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 Chief 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.

b. The Chief 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.

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

b. The Chief, 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 6.5.a) shall notify U.S. EPA and any affected state in writing of any refusal by the Chief 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 Chief's reasons for not accepting any such recommendation. The Chief is not required to accept recommendations that are not based on applicable requirements or the requirements of this rule.

7.3. EPA objection.

a. A permit shall not be issued by the Chief 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 42 U.S.C. 7661d of the Clean Air Act.

b. For consideration by the Chief 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 Chief shall not issue

45CSR30

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 Chief to resolve a U. S. EPA objection to a proposed permit or if the Chief 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 Chief 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:

a. Transition fees. Annual Fees for all stationary sources shall be due on or before July 1, 1994, in the amount of twenty (20) dollars per ton for actual emissions of all regulated air pollutants (for fee calculation) discharged during the calendar year 1993.

b. Title V operating permit fees. On or before July 1, 1995, and on or before July 1 of each year thereafter annual fees for all stationary sources requiring Title V operating permits shall be twenty-five (25) dollars per ton for actual emissions of all regulated air pollutants (for fee calculation) discharged during the most recent calendar year or portion thereof.

c. Conditioned minor source operating permit fees. On or before July 1 of each year, annual fees for stationary sources which have been issued Conditioned minor source operating permits shall be the greater of ten (10) dollars per ton for actual emissions of all regulated air pollutants (for fee calculation) discharged during the most recent calendar year, the fee for the source required under 45CSR22 or two hundred (200) dollars or portion thereof. Prior to permit issuance such sources shall be subject to the requirement of obtaining a Title V

45CSR30

operating permit and shall be subject to fees accordingly.

d. No fee shall be required under this rule with respect to emissions from any Phase I affected unit under 42 U.S.C. 7651c until the period beginning January 1, 2000. Thereafter, fees will be calculated in accordance with 8.1.b.

A. Facilities which contain only Phase I affected units continue to be subject to fees under 45CSR22 until the period beginning January 1, 2000.

B. Facilities which contain Phase I affected units under 42 U.S.C. 7651c and other affected units, under subchapter IV Acid Deposition Control of the Clean Air Act, 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 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 or a Conditioned minor source permit under this legislative 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 under the fee schedule in subsection 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 1989. For purposes of this clause:

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

45CSR30

b. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for 1989 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 legislative rule shall be required to pay only the higher calculated fee.

8.6. Application fees for sources holding Title V permits.

- a. Administrative amendments: \$ 100.00
- b. Minor modifications: \$ 250.00
- c. Significant modifications \$1000.00

8.7. 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. This penalty for delinquent payment is separate from and unrelated to any other penalties assessed by a court or collected by the Commission pursuant to article twenty, chapter sixteen of the Code of West Virginia, as amended, or any rules of the Commission.

8.8. Certified emissions statement.

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 2.31 and 2.32 for the most recent calendar year.

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

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

B. The Chief shall not issue a Title V or a Conditioned minor source operating permit until such adjustments have been made and any such liability satisfied.

C. The Chief shall credit the source with any decreasing adjustments to the certified emissions statement made pursuant to this paragraph.

D. The Chief 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.

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

**§45-30-9. Transition plan.**

9.1. The Chief 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:

- a. Date of receipt of application;
- b. Relative complexity of the application;
- c. Anticipated schedule for federal and state enactment of new applicable requirements which are anticipated to be incorporated into the permit;
- d. Type and amounts of air pollutants that will be discharged;
- e. Availability and particular training of reviewing staff; and
- 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 Chief may re-prioritize or reclassify any permit application based upon changes in regulatory requirements, area attainment status, or other relevant factors.

**§45-30-10. Enforcement.**

10.1. General. The provisions of this legislative rule may be enforced by all of the applicable provisions of article twenty, chapter sixteen (W. Va. Code 16-20-1, et seq.) of the West Virginia Code, as amended.

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 order of the Chief or, any regulation or order of the Commission. Such violations shall constitute serious violations for purposes of civil

enforcement as contained in section eight, article twenty, chapter sixteen of the Code of West Virginia, as amended.

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

**§45-30-11. Permits for Conditioned Minor Sources.**

11.1. Applicability.

a. The owner or operator of any source which, on the effective date of the operating permit program, is required to obtain a Title V operating permit solely as a result of the source having a potential to emit an air pollutant or pollutants in such amounts as to be considered a major source may request to be permitted as "Conditioned minor sources" under this section in lieu of obtaining a Title V operating permit. To be eligible for a Conditioned minor source permit, the permit applicant must propose and agree to enforceable emission limitations and limitations upon the hours of operation, production rates, or other factors so as to establish enforceable caps on the emission rates of all relevant pollutants for which the stationary source could be a major source.

b. All sources which have been issued pre-construction permits which establish emission caps below such amounts as to be considered a major source (as herein defined) through the use of operating limitations or other measures not mandated by any underlying emission standards shall not be required to obtain a permit under this rule but shall be subject to the fee requirements of paragraph 8.1.c. of this rule.

11.2. Application for Conditioned minor source permits.

a. Application content.

Permit applications shall be filed utilizing the same forms and shall provide the same information as that required for a Title V operating permit except as specifically provided by the Chief. The permit application shall also include a definitive maximum tons per year emissions limit for the source and an emissions limit for each unit in the source. The application shall be certified by a responsible official in the same manner as that required by subsection 4.4.

b. Application timing.

Initial applications, intended by the applicant upon the effective

## 45CSR30

date of the operating permit program to be permitted under Conditioned minor source procedures, shall be submitted to the Chief in accordance with the schedule set forth in subsection 4.1 except that all Conditioned minor sources applications shall be submitted within six (6) months of the effective date of the operating permit program.

### 11.3. Revision to Conditioned minor source permits.

a. All changes in operation which may increase the potential to emit at a Conditioned minor source with respect to any pollutant for which plant emission caps are established are subject to review under the provisions of this rule and any applicable pre-construction requirements in any rule of the Commission. In the event that a proposed change in the permit terms and conditions for a Conditioned minor source would result in the requirement of a Title V operating permit, all provisions set forth in this rule for obtaining such a permit shall be applicable except that the conditioned minor source may submit an application for such permit at the time that the proposed changes to the source demonstrates the requirement for a Title V permit. Compliance with all terms and conditions of the Conditioned minor source permit shall be required prior to issuance of the final Title V operating permit and any necessary pre-construction permits.

b. All changes at a Conditioned minor source which constitute construction or modification as defined in 45CSR13, 45CSR14, 45CSR15, and 45CSR19 shall be required to meet all substantive requirements of those rules.

### 11.4. Permit content.

a. The Conditioned minor source operating permit shall contain substantially the same information and obligations as that required by section five of this rule unless otherwise specified by the Chief. The Conditioned minor source operating permit shall also include a definitive maximum tons per year emissions limit for the source and emission limits for all emission units at the source.

b. Conditioned minor source operating permits shall be issued for a term of five (5) years and shall contain no permit shield.

### 11.5. Federally-enforceable requirements.

All terms and conditions in a Conditioned minor source operating permit designed to limit a source's potential to emit to a level below a threshold which would make the facility subject to a Title V operating permit must be enforceable by the

#### 45CSR30

Chief and U.S. EPA. Such conditions in addition to or in conjunction with any requirements from any rule which is a part of the State's Implementation Plan (under the federal Clean Air Act) shall be enforceable by the Chief and U. S. EPA. All emission limitations in the permit shall be quantifiable, permanent, and practicably enforceable.

##### 11.6. Public participation.

a. The Chief shall, prior to issuance or revision of any Conditioned minor source permit, prepare a fact sheet or determination supporting his or her stated intent to issue such a permit and shall transmit to U.S. EPA and any other interested party which so requests, a copy of the fact sheet or determination and a draft copy of the permit which is proposed for issuance. Concurrently with the transmission of this information, the Chief shall, through a Class I legal advertisement in a newspaper in general circulation in the area of the Conditioned minor source, notify the public of the Chief's intent to issue a permit and provide for a 30 day comment period by the public and U.S. EPA. The legal advertisement shall summarize the Chief's findings and provide notice of the availability for public review of the draft permit and fact sheet.

b. The Chief shall review and appropriately address any comments received from the public and EPA prior to permit issuance or revision.

c. A public meeting to receive comments on any draft permit, the Chief's determination and the permit application may be held when the Chief deems it appropriate or when substantial interest is expressed, in writing, by a significant number of persons who might reasonably be expected to be affected by the source in question.

d. The Chief, or a duly authorized employee of the Division of Environmental Protection, shall preside over such meetings and insure that all interested parties have ample opportunity to present comments. Such meetings shall be held in the general area or county in which the facility is located.

e. At a reasonable time prior to such meetings, the Chief shall provide appropriate information to news media in the area where source is located or otherwise provide notice of the meetings.

##### **§45-30-12. Permit Suspension, Modification, Revocation, and Reissuance.**

The Chief may suspend, modify, or revoke and reissue a Title V or

Conditioned minor source operating permit in accordance with the provisions contained in W. Va. Code §16-20-6.

**§45-30-13. Authority of the Chief to Establish Applicable Requirements.**

13.1. After the effective date of the operating permit program, the Chief shall determine and apply case-by-case MACT standards to each category contained in the "Initial List of Categories of Sources Under 112(c)(1) 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 42 U.S.C. 7412(e) [C.A.A. §112(e)].

13.2. After the effective date of the operating permit program, the Chief 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 Commission. Such MACT standards must be equivalent to any applicable standard promulgated for such sources by U.S. EPA.

13.3. After the effective date of the operating permit program, the Chief 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 Commission. Such MACT standards must be equivalent to any applicable standard promulgated for such sources by U.S. EPA.

13.4. The Chief may accept delegation of authority from U.S. EPA to administer permits issued by U.S. EPA under the provisions of subchapter IV Acid Deposition Control of the Clean Air Act.

13.5. The Chief may accept delegation of authority to administer permits issued by U.S. EPA under the early reduction program for hazardous air pollutants of (42 U.S.C. 7412(i)(5)). Such authority shall include the ability to collect emission-based fees under section eight of this rule.

13.6. The Chief 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.

**§45-30-14. Severability.**

The provisions of this legislative 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 legislative rule or their application to any persons and circumstances.

**§45-30-15. Conflict with Other Rules.**

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

## 45CSR30

TABLE 45-30A.

HAZARDOUS AIR POLLUTANTS		
CAS Number	Chemical Name	
		133062 Captan
		63252 Carbaryl
75070	Acetaldehyde	75150 Carbon disulfide
60355	Acetamide	56235 Carbon tetrachloride
75058	Acetonitrile	463581 Carbonyl sulfide
98862	Acetophenone	120809 Catechol
53963	2-Acetylaminofluorene	133904 Chloramben
107028	Acrolein	57749 Chlordane
79061	Acrylamide	7782505 Chlorine
79107	Acrylic acid	79118 Chloroacetic acid
107131	Acrylonitrile	532274 2-Chloroacetophenone
107051	Allyl chloride	108907 Chlorobenzene
92671	4-Aminobiphenyl	510156 Chlorobenzilate
62533	Aniline	67663 Chloroform
90040	o-Anisidine	107302 Chloromethyl methyl ether
1332214	Asbestos	
71432	Benzene (including benzene from gasoline)	126998 Chloroprene
		1319773 Cresols/Cresylic acid (isomers and mixture)
92875	Benzidine	95487 o-Cresol
98077	Benzotrichloride	108394 m-Cresol
100447	Benzyl chloride	106445 p-Cresol
92524	Biphenyl	98828 Cumene
117817	Bis(2-ethylhexyl) phthalate (DEHP)	94757 2,4-D, salts and esters
542881	Bis(chloromethyl) ether	3547044 DDE
		334883 Diazomethane
75252	Bromoform	132649 Dibenzofurans
106990	1,3-Butadiene	96128 1,2-Dibromo-3-chloropropane
156627	Calcium cyanamide	
105602	Caprolactam	84742 Dibutylphthalate

## 45CSR30

106467	1,4-Dichlorobenzene(p)		Chloro-2,3-epoxypropene)
91941	3,3-Dichlorobenzidene	106887	1,2-Expoxybutane
111444	Dichloroethyl ether (Bis(2-chloroethyl) ether)	140885	Ethyl acrylate
542756	1,3-Dichloropropene	100414	Ethyl benzene
62737	Dichlorvos	51796	Ethyl carbamate (Urethane)
111422	Diethanolamine	75003	Ethyl chloride (Chloroethane)
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)	106934	Ethylene dibromide (Dibromoethane)
64675	Diethyl sulfat	107062	Ethylene dichloride (1,2-Dichloroethane)
119904	3,3-Dimethoxybenzidine	107211	Ethylene glycol
60117	Dimethyl aminoazobenzene	151564	Ethylene imine (Aziridine)
119937	3,3-Dimethyl benzidine	75218	Ethylene oxide
79447	Dimethyl carbamoyl chloride	96457	Ethylene thiourea
68122	Dimethyl formamide	75343	Ethylidene dichloride (1,1-Dichloroethane)
57147	1,1-Dimethyl hydrazine	50000	Formaldehyde
131113	Dimethyl phthalate	76448	Heptachlor
77781	Dimethyl sulfat	118741	Hexachlorobenzene
534521	4,6-Dinitro-o-cresol, and salts	87683	Hexachlorobutadiene
51285	2,4-Dinitrophenol	77474	Hexachlorocyclo- pentadiene
121142	2,4-Dinitrotoluene	67721	Hexachloroethane
123911	1,4-Dioxane (1,4-Diethyleneoxide)	822060	Hexamethylene-1,6- diisocyanate
122667	1,2-Diphenylhydrazine	680319	Hexamethyl- phosphoramidate
106898	Epichlorohydrin (1-	110543	Hexane
		302012	Hydrazine

## 45CSR30

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

## 45CSR30

75558	1,2-Propylenimine (2-Methyl aziridine)	108054	Vinyl acetate
91225	Quinoline	593602	Vinyl bromide
106514	Quinone	75014	Vinyl chloride
100425	Styrene	75354	Vinylidene chloride (1,1-
96093	Styrene oxide		Dichloroethylene)
1746016	2,3,7,8- Tetrachlorodibenzo-p- dioxin	1330207	Xylenes (isomers and mixture)
79345	1,1,2,2- Tetrachloroethane	95476	o-Xylenes
127184	Tetrachloroethylene (Perchloroethylene)	108383	m-Xylenes
7550450	Titanium tetrachloride	106423	p-Xylenes
108883	Toluene	0	Antimony Compounds
95807	2,4-Toluene diamine	0	Arsenic Compounds (inorganic including arsine)
584849	2,4-Toluene diisocyanate	0	Beryllium Compounds
95534	o-Toluidine	0	Cadmium Compounds
8001352	Toxaphene (chlorinated camphene)	0	Chromium Compounds
120821	1,2,4- Trichlorobenzene	0	Cobalt Compounds
79005	1,1,2-Trichloroethane	0	Coke Oven Emissions
79016	Trichloroethylene	0	Cyanide Compounds <sup>7</sup>
95954	2,4,5-Trichlorophenol	0	Glycol ethers <sup>2</sup>
88062	2,4,6-Trichlorophenol	0	Lead Compounds
121448	Triethylamine	0	Manganese Compounds
1582098	Trifluralin	0	Mercury Compounds
540841	2,2,4- Trimethylpentane	0	Fine mineral fibers <sup>3</sup>
		0	Nickel Compounds
		0	Polycyclic Organic Matter <sup>4</sup>
		0	Radionuclides (including radon) <sup>5</sup>
		0	Selenium Compounds

45CSR30

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.

<sup>1</sup>X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>

<sup>2</sup>Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-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-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OH. Polymers are excluded from the glycol category.

<sup>3</sup>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.

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

<sup>5</sup>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)  
hydrochlorofluorocarbon-232 (HCFC-232)  
hydrochlorofluorocarbon-233 (HCFC-233)  
hydrochlorofluorocarbon-234 (HCFC-234)  
hydrochlorofluorocarbon-235 (HCFC-235)  
hydrochlorofluorocarbon-241 (HCFC-241)  
hydrochlorofluorocarbon-242 (HCFC-242)

45CSR30

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.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY

State Capitol, Room M-146

Charleston, West Virginia 25305-0310

Telephone: (304) 558-0400

Fax No.: (304) 558-4983

GASTON CAPERTON  
Governor

JOHN M. RANSON  
Cabinet Secretary

June 2, 1993

Britt A. Bernheim, Secretary  
West Virginia Air Pollution  
Control Commission  
1615 Washington Street, East  
Charleston, West Virginia 25311

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

JUN 2 4 02 PM '93

FILED

Re: 45CSR13 - "Permits for Construction, Modification,  
Relocation and Operation of Stationary Sources  
of Air Pollutants, Notification Requirements,  
Temporary Permits, General Permits, and  
Procedures for Evaluation" and

45CSR30 - "Requirements for Operating Permits"

Dear Ms. Bernheim:

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

I am authorizing the proposal of Regulation 30 with the  
understanding that the fees it proposes will be subjected to public  
comment and scrutiny before final adoption. I reserve judgment on  
whether the fee levels proposed in these rules will be found  
appropriate after completion of the rulemaking process.

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

Sincerely yours,

John M. Ranson  
Cabinet Secretary

JMR:ro

t:\air6-2.rul