

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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Nov 9 4 29 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

12/13/93

NOTICE OF AN EMERGENCY RULE

AGENCY: Air Pollution Control Commission TITLE NUMBER: 45CSR30

CITE AUTHORITY: W.Va. Code §16-20-5

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 45CSR30

TITLE OF RULE BEING FILED AS AN EMERGENCY: "Requirements

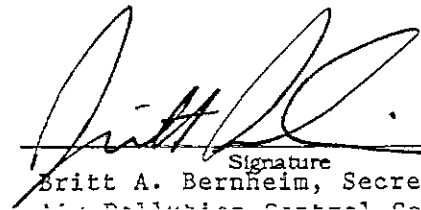
For Operating Permits"

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See Statement of Emergency

Use Additional Sheets If Necessary.


Signature
Britt A. Bernheim, Secretary
Air Pollution Control Commission

TITLE V—PERMITS

Sec. 501. Permits.

SEC. 501. PERMITS.

Add the following new title after title IV:

TITLE V—PERMITS

*Sec. 501. Definitions.

*Sec. 502. Permit programs.

*Sec. 503. Permit applications.

*Sec. 504. Permit requirements and conditions.

*Sec. 505. Notification to Administrator and contiguous States.

*Sec. 506. Other authorities.

*Sec. 507. Small business stationary source technical and environmental compliance assistance program.

*SEC. 501. DEFINITIONS.

42 USC 7661.

As used in this title—

“(1) **AFFECTED SOURCE.**—The term ‘affected source’ shall have the meaning given such term in title IV.

“(2) **MAJOR SOURCE.**—The term ‘major source’ means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

“(A) A major source as defined in section 112.

“(B) A major stationary source as defined in section 302 or part D of title I.

“(3) **SCHEDULE OF COMPLIANCE.**—The term ‘schedule of compliance’ means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

“(4) **PERMITTING AUTHORITY.**—The term ‘permitting authority’ means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this title.

SEC. 502. PERMIT PROGRAMS.

42 USC 7661a.

“(a) **VIOLATIONS.**—After the effective date of any permit program approved or promulgated under this title, it shall be unlawful for any person to violate any requirement of a permit issued under this title, or to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under parts C or D of title I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator’s discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the

requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

"(b) REGULATIONS.—The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

"(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

"(2) Monitoring and reporting requirements.

"(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this title pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title, including section 507, including the reasonable costs of—

"(i) reviewing and acting upon any application for such a permit,

"(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

"(iii) emissions and ambient monitoring,

"(iv) preparing generally applicable regulations, or guidance,

"(v) modeling, analyses, and demonstrations, and

"(vi) preparing inventories and tracking emissions.

"(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

"(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than \$25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

"(ii) As used in this subparagraph, the term 'regulated pollutant' shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

"(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

"(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an

amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

"(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 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—

"(I) 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 12-month period ending on August 31 of each calendar year, and

"(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

"(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

"(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

"(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

"(4) Requirements for adequate personnel and funding to administer the program.

"(5) A requirement that the permitting authority have adequate authority to:

"(A) issue permits and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act;

"(B) issue permits for a fixed term, not to exceed 5 years;

"(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

"(D) terminate, modify, or revoke and reissue permits for cause;

"(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than \$10,000 per day for each violation, and provide appropriate criminal penalties; and

"(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this title.

"(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

"(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appropriate, title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

"(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

"(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this title regarding renewals.

"(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d)) without requiring a permit revision, if the changes are not modifications under any provision of title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: *Provided*, That the

facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

"(c) SINGLE PERMIT.—A single permit may be issued for a facility with multiple sources.

~~"(1) SUBMISSION AND APPROVAL.—(I) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.~~

"(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of title I).

"(3) If a program meeting the requirements of this title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this title for that State.

"(e) SUSPENSION.—The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce feder-

ally issued permits under this title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

"(f) PROHIBITION.—No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this title and each of the following:

"(1) All requirements established under title IV applicable to 'affected sources'.

"(2) All requirements established under section 112 applicable to 'major sources', 'area sources', and 'new sources'.

"(3) All requirements of title I (other than section 112) applicable to sources required to have a permit under this title. Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

"(g) INTERIM APPROVAL.—If a program (including a partial permit program) submitted under this title substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

"(h) EFFECTIVE DATE.—The effective date of a permit program, or partial or interim program, approved under this title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

"(i) ADMINISTRATION AND ENFORCEMENT.—(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

"(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this title or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

*SEC. 503. PERMIT APPLICATIONS.

42 USC 7661b.

"(a) **APPLICABLE DATE.**—Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates—

"(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

"(2) the date such source becomes subject to section 502(a).

"(b) **COMPLIANCE PLAN.**—(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

Reports.

"(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

"(c) **DEADLINE.**—Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Act.

"(d) **TIMELY AND COMPLETE APPLICATIONS.**—Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a

violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

Public
information.

“(e) COPIES; AVAILABILITY.—A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

42 USC 7661c.

“SEC. 504. PERMIT REQUIREMENTS AND CONDITIONS.

“(a) CONDITIONS.—Each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.

“(b) MONITORING AND ANALYSIS.—The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV, or where required elsewhere in this Act.

“(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.—Each permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this title shall be signed by a responsible corporate official, who shall certify its accuracy.

“(d) GENERAL PERMITS.—The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 503.

“(e) TEMPORARY SOURCES.—The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I. Any such permit shall in addition require the owner or operator to notify

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 1994-95	1995-96
Estimated Total Cost	\$3,314,000	\$-----	\$2,254,000	\$3,030,000	\$4,040,000
Personal Services	2,523,000	-----	1,690,000	2,272,000	3,029,000
Current Expense	742,000	-----	478,000	642,000	856,000
Repairs and Alterations	66,000	-----	31,000	42,000	55,000
Equipment	-----	-----	55,000	74,000	100,000
Other	-----	-----	-----	-----	-----

2. Explanation of above estimates:

The above estimates for required program funding in 1995-96 are based upon the maximum funding level provided by this rule of \$20/ton of regulated air pollutant emissions as set forth in the proposed rule. The 1994-95 level is a ramp-up funding level set at \$15/ton based upon an estimate of necessary funding to reach 80% of the projected final staffing level to fully meet all Clean Air Act requirements including Title V and State Air Pollution Control Act. The current funding estimate is based upon the FY93-94 appropriation for the air quality 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:

To establish and implement a broad and complex new operating permit program for facilities emitting regulated air pollutants as mandated by Title V of the 1990 federal Clean Air Act Amendments.

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.

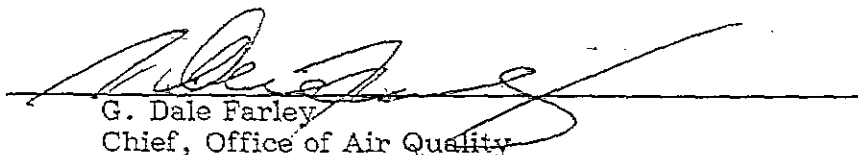
Under the \$25/ton presumptive funding requirement of Title V (federal Clean Air Act) industries subject to the new permit requirements would be required to pay total fees to the air program of approximately \$5,454,000 per year. The proposed program, however, is based upon the Office of Air Quality's projected staffing and resource needs which will require a fee assessment of up to \$20/ton of regulated air pollutant emissions to fully cover the direct and indirect costs of administering the mandated federal Title V operating permits program. It is estimated that regulated facilities will pay, in total, at the \$20/ton fee level, \$4,040,000 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: 8/13/93

Signature of agency head or authorized representative:


G. Dale Farley
Chief, Office of Air Quality

DATE: NOVEMBER 9, 1993
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: G. DALE FARLEY, CHIEF
WV DIV OF ENVIRONMENTAL PROTECTION OFFICE OF AIR QUALITY
EMERGENCY RULE TITLE: 45CSR30 - "REQUIREMENTS FOR OPERATING PERMITS"

1. Date of filing: November 9, 1993
2. Statutory authority for promulgating the emergency rule: W. Va. Code §16-20-5 and W. Va. Code §29A-3-15
3. Date of filing of proposed legislative rule: Agency-approved 45CSR30 was filed with the LRMRC on August 13, 1993
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Emergency rule 45CSR30 is a new rule required by the provisions of Title V of the Clean Air Act Amendments of 1990.
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
See Number 7. West Virginia is required by the Clean Air Act Amendments of 1990 to implement a comprehensive operating permit program for major sources of air pollutants. This rule provides for the implementation of such a program.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

42 U.S.C. §7661a(d) [§502(d) C.A.A.]

Time Limit: November 15, 1993

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The federal government requires all states to submit a comprehensive operating permit program to U.S.EPA by November 15, 1993. Failure to implement such rules will trigger federal sanctions as provided in

42 U.S.C. §7509 [§179 C.A.A.]. See Statement of Emergency.

STATEMENT OF EMERGENCY
45CSR30
REQUIREMENTS FOR OPERATING PERMITS

The Clean Air Act Amendments of 1990 (42 U.S.C. §§7401, et seq.) require a November 15, 1993 submission of a comprehensive operating permit program for certain sources of air pollutants. Time requirements for submission of this program (Title V operating permit program) are contained in 42 U.S.C. §7661a(d) [§502(d) C.A.A.]. An element necessary for the proper submission of the operating permit program is an effective rule implementing the program. 45CSR30 is the rule which implements West Virginia's Title V operating permit program.

Sanctions for failure to properly submit the Title V operating permit program are referenced in 42 U.S.C. §7509 [§179 C.A.A.].

45CSR30 was filed as an agency-approved rule with the Secretary of State and Legislative Rule-Making Review Committee on August 13, 1993. Emergency 45CSR30 contains the same text as the agency-approved rule.

FILED

45CSR30

Nov 9 4 29 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 Title V of the Clean Air Act (42 U.S.C. 7401 et seq.). ~~Further, this rule,~~ and provides for a transition period prior to the implementation of the permitting system. All fees collected pursuant to this rule shall be expended solely to cover all reasonable direct and indirect costs required to administer the Title V operating permit program and accounted for in accordance with this rule.

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

1.3. Filing Date. August 13, 1993.

1.4. Effective Date. --

\$45-30-2. Definitions.

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

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

2.23. "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.

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

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

2.56. "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 or promulgated by U. S. EPA through rulemaking under Title I of the Clean Air Act that implements the relevant requirements of the Act, including any revisions to that State Implementation Plan;

b. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Pparts 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~~ § 111, including § 111(d), of the Clean Air Act; ~~including 42-U.S.C.-7411(d)~~

d. Any standard or other requirements under ~~42-U.S.C.-7412~~ § 112 of the Clean Air Act, including any requirement concerning accident prevention under ~~42-U.S.C.-7412(r)-(7)~~ § 112(r) (7) of the Clean Air Act, but not including the contents of any risk management plan required under ~~42-U.S.C.-7412(r)~~ § 112(r) of the Clean Air 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~~ § 504(b) or § 114(a)(3) of the Clean Air Act;

g. Any standard or other requirement governing solid waste incineration under ~~42-U.S.C.-7429~~ § 129 of the Clean Air Act;

h. Any standard or other requirement for consumer and commercial products under ~~42-U.S.C.-7511b(c)~~ § 183(c) of the Clean Air Act;

i. Any standard or other requirement for tank vessels under ~~42-U.S.C.-7511b(f)~~ § 183(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 pursuant to an exemption by U.S. EPA;

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) § 504(e) of the Clean Air Act;

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

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

2.67. "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 § 111 or § 112 of the Clean Air Act.

2.78. "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.

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

2.910. "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.~~

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

2.12. "Director" means the 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.

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

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

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

2.1920. "EPA" or "U. S. EPA" means the United States Environmental Protection Agency.

2.201. "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.

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

opening.

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

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

2.235. "Case-by-case maximum achievable control technology" or "MACT" means an emissions limitation requiring the application of the maximum degree of reduction and control which the Chief, ~~on a case-by-case basis,~~ determines is achievable for each source or category of source which requires a case-by-case MACT determination ~~hazardous air pollutant~~ pursuant to the provisions of subsections ~~1312.1, 1312.2, and 1312.3~~ of this rule.

a. In the case of ~~such listed~~ sources constructed or modified after the effective date of this regulation rule, 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 MACT requirements for new or modified sources in the same category, but shall not be less stringent than the following:

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

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; or

E. Are a combination of the above.

2.246. "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 2.246.a, 2.246.b, or 2.246.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~~ 112 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)~~ § 112(b) of the Clean Air Act or twenty-five (25) tpy or more of any combination of such hazardous air pollutants. See Table 45-30A for a listing of hazardous air pollutants regulated pursuant to this legislative rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

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§ 302~~ § 302 of the Clean Air Act, that directly emits or has the potential to emit, one hundred (100) tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule of the 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)~~ § 302(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;
- 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;

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- 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;
- 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~~ § 111 or § 112 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~~ Title 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 (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~~ § 181(f)(1) or (2) of the Clean Air Act, that requirements under section ~~42-U.S.C.-7511~~ § 181(f) of the Clean Air Act do not apply;

B. For ozone transport regions established pursuant to ~~42-U.S.C.-7511~~ § 184 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;

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.

2.257. "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.

2.268. "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.

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

2.2830. "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.

2.2931. "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 Title IV Acid-Deposition Control of the Clean Air Act (Acid Deposition Control) or the regulations promulgated thereunder.

2.302. "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.

2.313. "Regulated air pollutant" means the following:

- a. Nitrogen oxides (NO_x), any volatile organic compound, or particulate matter;
- b. Any pollutant for which a national ambient air quality standard has been promulgated;
- c. Any pollutant that is subject to any standard promulgated under ~~42-U.S.C.-7411~~ § 111 of the Clean Air Act;
- d. Any Class I or II substance subject to a standard promulgated under or established by subchapter Title VI of the Clean Air Act (~~42-U.S.C.-7671a~~ § 602). (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~~ § 112 of the Clean Air Act, including sections ~~7412~~ § 112(g), (j), and (r), including the following:

A. Any pollutant subject to requirements under ~~42-U.S.C.-7412~~ § 112(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~~ § 112(e) of the Clean Air Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to ~~42-U.S.C.-7412~~ § 112(e) of the Clean Air Act.

B. Any pollutant for which the requirements of section ~~42-U.S.C.-7412~~ § 112(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~~ that § 112(g)(2) requirement.

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

2.324. "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 2.245.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~~ § 602 of the Clean Air Act (See Table 45-30B for a listing of Class I and Class II substances);

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~~ § 112(r) of the Clean Air Act; or

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

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

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

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

2.358. "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 U.S. EPA); or

d. For affected sources:

A. The designated representative in so far as actions,

standards, requirements, or prohibitions under subchapter Title IV {Acid Deposition Control} of the Clean Air Act (Acid Deposition Control) or the regulations promulgated thereunder are concerned; and

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

2.369. "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.

2.3740. "Source" or "Stationary source" means, for the purpose of this rule, any building, structure, facility, or installation that emits or may emit any air pollutant.

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

2.3842. "Title V operating permit" means a permit, ~~other than a conditioned minor source permit,~~ issued under the provisions of this rule.

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

2.3944. "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§ 111 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§ 112 of the Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under 42-U.S.C.-7412§ 112(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 and Deferrals.

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§~~ 129(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~~ Any such deferral by the Chief shall be consistent with the timetable established by U.S.EPA for non-major sources to which this rule applies except as provided under subsection 4.1.a.

b. Any source listed in paragraph 3.2.a of this subsection, ~~exempt/deferred~~ 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~~ this rule to have a Title V operating permit, the following source categories are exempted from the obligation to obtain a Title V operating permit:

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.

d. Insignificant emission units or activities within a stationary source subject to this rule which require only identification within the required permit application are as follows:

A. Flares used solely to indicate danger to the public.

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

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

D. Indoor or outdoor kerosene heaters.

E. Space heaters operating by direct heat transfer.

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

G. Air contaminant detectors or recorders, combustion controllers or shutoffs.

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

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

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

K. Portable generators.

L. Firefighting equipment and the equipment used to train firefighters.

M. Such other sources or activities as the Chief may determine.

Potential emissions from these units or activities may not be excluded in the determination as to whether a stationary source is a major source for the purpose of determining applicability of this rule.

3.3. Emission units and sources.

a. For major sources, the Chief shall include in the permit all applicable requirements for all emissions units other than insignificant emission 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 for sources which are in existence on the effective date of the operating permit program shall be submitted in accordance with the following schedule:

(a) Applications for coal preparation plants as defined in 4540 C.F.R. 60.250 and 251, whether major or minor sources, which are subject to performance standards under 40 C.F.R. 60, subpart Y, and all other coal preparation plants which are major sources shall be submitted to the 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 40 C.F.R. 60 subpart I including area sources and all hot mix asphalt plants which are major sources shall be submitted to the 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 40 C.F.R. 60 subpart CC shall be submitted to the Chief within one hundred eighty (180) days of the effective date of the operating permit program.

(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§ 112(g) of the Clean Air Act, or to have a permit under the preconstruction review program approved into the State Implementation Plan under part C or D of

~~subchapter~~ Title 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 or the source may apply for a single permit in accordance with all applicable provisions and procedures of this rule and all applicable preconstruction permitting rules.

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~~ Title 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_x.

E. ~~Within six (6) months of the last day of the eighteenth (18th) month~~ Within eighteen (18) months following the date established by U.S. EPA's failure to timely promulgate a standard in accordance with the requirements of ~~42-U.S.C. 7412(e) {C.A.A. § 112(e)}~~ of the Clean Air Act, the owner or operator of a major source subject to this paragraph shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this section, any failure to have a permit shall not be a violation of the requirements of this rule, unless the delay in final action is due to the failure of the applicant to timely submit information required or requested by the Chief to process the application on forms to be made available by the Chief.

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~~ in the case of minor permit modifications

made pursuant to subsection 6.5 of this rule. Any application which is timely submitted and subsequently determined to be complete within the initial sixty (60) day completeness review period by the Chief shall be deemed to be complete on the date that it was filed. If, during processing an application that has been determined or deemed to be complete, the 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 which is not insignificant as defined in section 3.2.d, shall be included in the application, except that a list of insignificant activities or emission units must be included in the application. An application shall contain all information necessary to determine the applicability of, or to impose, any applicable requirement, and to evaluate the fee amount required under section eight of this rule. The application forms shall include, but not be limited to, the elements specified below:

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 emission-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~~ qualify as insignificant emission units as defined in subsection 3.2.d of this rule or are exempted under subsection 3.1 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.

G. Other information required by any applicable requirements (including information related to stack height limitations developed pursuant to 42 U.S.C. 7425§ 125 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 effective 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 and orders and a list of all such permit applications which are pending action by the Chief or 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 pursuant to paragraph 5.1.j, alternative operating scenarios identified by the source pursuant to paragraph 5.1.i, 5.1-j, or operational flexibility pursuant to subsection 5.8, and alternative equivalent emission limits pursuant to 5.1.a.C.

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.

(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 except as specifically superseded by rules promulgated by the Commission with regard to Title IV of the Clean Air Act (Acid Deposition Control).

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~~ § 114(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;

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~~Title IV of the Clean Air Act (Acid Deposition Control) portions of permit applications and compliance plans.

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

§45-30-5. Permit Content.

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

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~~Title IV Acid-Deposition-Control of the Clean Air Act (Acid Deposition Control), both provisions shall be incorporated into the permit and shall be enforceable by the Chief and U.S. EPA.

C. If the ~~applicable requirements~~rules promulgated by the Commission pursuant to provisions of Title I of the Clean Air Act and contained in the State Implementation Plan allow a determination of an alternative equivalent emission limit at a source to be made in the permit issuance, renewal, or significant

modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures. ~~The source shall propose permits 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. 7661e~~ 504(b) or ~~42-U.S.C. 7414~~ 114(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 periods 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:

(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 in accordance with any rules of the Commission. ~~--The Chief shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.~~

(c) In addition to monitoring reports required by the permit, ~~prompt submission of supplemental reports and notices as follows~~ are deemed to be prompt if submitted in the following fashion:

(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 Title IV Acid-Deposition Control of the Clean Air Act (Acid Deposition Control) or rules of the Commission promulgated thereunder.

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.

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

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 to the Chief and 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.

D. May include categories of VOCs which in the Chief's discretion can be substituted for one another in a production process.

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 "sState-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. Permit revisions and reopenings for state only requirements shall be accomplished by using the procedures of section six of this rule, except that such revisions are not subject to U.S. EPA or affected state review.

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

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

conditions of the permit;

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 as contained in section six of this rule, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other Title V operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the 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 Title IV Acid-Deposition-Control of the Clean Air Act (Acid Deposition Control) unless otherwise provided in rules promulgated by the Commission in accordance with that Title IV 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

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~~ Title V of the Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The Chief may grant a request for a source to operate under a general permit without repeating the public participation procedures as required by subsection 6.8, and such grant shall not be a final permit action for judicial review.

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~~ a source-specific permit application for other emissions units or activities. In the event that both a general permit and ~~an individual~~ a source-specific permit are granted to the same source, the ~~individual~~ source-specific permit shall ~~reference~~ incorporate 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 terms and duration of any general permit incorporated under a source-specific permit shall be void upon the issuance of such source-specific permit and the terms and duration of such source-specific permit shall then control.

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

a. ~~Conditions provisions~~ 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 otherwise provided in this subsection rule, 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 such a 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

B. The applicable requirements of the Code of West Virginia and ~~subchapter~~ Title IV of the Clean Air Act (Acid Deposition Control), consistent with ~~42-U.S.C.-7651g~~ § 408(a) of the Clean Air Act.

C. The authority of the Administrator of U.S. EPA to require information under § 114 of the Clean Air Act or to issue emergency orders under § 303 of the Clean Air Act.

5.7. Emergency provision.

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. Subject to the requirements of subpart 5.1.c.C.(c)(B), t
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, and 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.

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~~ shall provide that a permittee may 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)~~ any provision of Title I of the Clean Air Act (including 45CSR14 and 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 rules promulgated by the Commission pursuant to provisions of Title I of the Clean Air Act and which are contained in the State Implementation Plan for West Virginia provide for such emissions trades without a permit modification. In such a case, the advance written notice provided by the permittee shall identify the applicable requirements allowing trading and shall state when the change will occur, the types and quantities of emissions to be traded, the permit terms or other applicable requirements with which the source will comply through emissions trading, and such other information as may be required by the Chief.

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

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~~paragraph 5.1.j of this rule. The permit shield under subsection 5.6 shall apply to permit terms and conditions authorizing such increases and decreases in emissions. The written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

5.9. Off-permit changes. Except as provided in paragraph 5.9.e below, a facility may make any change in its operations or emissions that is not addressed nor prohibited in its permit and which is not considered to be construction nor modification under any rule promulgated by the Commission without obtaining an amendment or 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 within two (2) business days following~~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 change subject to any requirement under Title IV of the Clean Air Act (Acid Deposition Control) 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 these rules pursuant to the provisions of this subsection.~~

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

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

6.1. Action on application.

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;

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 and as may be required by rules of the Commission pursuant to Title IV of the Clean Air Act (Acid Deposition Control), the Chief shall take final action on each complete permit application ~~(including a request for permit modification or renewal) within eighteen (18) months~~ within twelve (12) months after receiving a complete the application is deemed complete.

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~~ of the completeness to the applicant. 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~~ No completeness determination need be made for minor permit modification procedures, applications 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; ~~i.~~ In accordance with subsection 6.9--F, 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 preconstruction permits required under the rules of the Commission except that a source may, with approval of the Chief, elect to file a single permit application to obtain any required preconstruction permits and a Title V operating permit or permit revision, if the procedures required by the applicable preconstruction rule and all requirements of the preconstruction permitting rules are complied with in the issuance of a Title V operating permit.

6.2. Requirement for a permit. Except as provided in subparagraph 6.5.a.E, subsection 5.8, and as further provided in this subsection no source may operate after the time that it is required to submit a timely and complete application under this rule except in compliance with an effective permit under this rule. If a source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a Title V operating permit is not a violation of this rule until the 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.

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

6.4. Administrative permit amendments.

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 preconstruction review program, including 45CSR13, 45CSR14, 45CSR15, and 45CSR19, provided that the issuance of such a preconstruction 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.~~ Incorporate into the Title V operating permit all provisions required under this rule and all preconstruction

requirements under Title I of the Clean Air Act (including requirements of 45CSR14 and 45CSR19); or

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

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. Permit modifications for the purposes of the acid deposition control portion of the permit shall be governed by regulations promulgated by the Commission in accordance with federal rules under Title IV of the Clean Air Act (Acid Deposition Control).

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 for temporary sources of ambient air quality impacts, or a visibility or increment analysis;

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

(E) Do not involve preconstruction review or ~~modification under 45CSR13, 45CSR14, 45CSR15, and 45CSR19~~ Title I of the Clean Air Act or 45CSR14 and 45CSR19; and

(F) Are not required under any rule ~~by~~ of 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 which are approved by U.S. EPA as part of the State Implementation Plan under the Clean Air Act, or which may be otherwise provided for in the Title V operating permit issued under this rule.

(c) Except as provided in this section, permit modifications that involve construction of emission units which:

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

(B) Results in any increase in emissions of a hazardous or toxic air pollutant listed in Table 45-30C at a facility which, prior to

the modification, has the potential to emit the hazardous or toxic air pollutant at or above the amount set forth in Table 45-30C; or

(C) Results in an increase in emissions of any hazardous or toxic air pollutant listed in Table 45-30C that would in turn result in total emissions of the hazardous or toxic air pollutant at the stationary source equal to or greater than the amounts in Table 45-30C.

(d) When a permit is modified, only the conditions subject to modification can be reopened, and all other conditions of the permit remain in effect.

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. U.S. 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.

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

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

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 including, but not limited to, the following: ~~A modification shall be considered significant if, in the judgment~~

~~of the Chief, action on an application for modification~~

(a) Modifications under any provision of Title I of the Clean Air Act, except those that qualify for processing as administrative permit amendments under subsection 6.4 or any rule of the Commission required under Title I of the Clean Air Act;

(b) A significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting of recordkeeping permit terms or conditions;

(c) A change to a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(d) Establishment of or change to a permit or condition for which there is no corresponding underlying applicable requirement.

(e) Proposed changes which in the judgement of the Chief 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 U.S. EPA with respect to the determination of applicable requirements or air quality impacts. -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 U.S. EPA as they apply to permit issuance and permit renewal. The Chief shall complete ~~this~~the review process ~~effor~~for 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~~ Title IV of the Clean Air Act (Acid Deposition Control) 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 or U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

D. The Chief or U.S. EPA 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. The notice shall include a statement of the reasons for the reopening of the permit. Until such time as a permit is reissued pursuant to the reopening, the source shall be entitled to the continued protection of any permit shield provided in the permit, unless the

Chief specifically suspends the shield upon a finding that such suspension is necessary to implement applicable requirements.

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

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 is 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.]

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 except that failure to give notice to any person, other than as provided in subpart of 6.8.a.C.(a)(C) and part 6.8.a.C.(b), shall not be a cause for denial or delay of permit issuance, or for repeating the public comment period:

(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):

(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:

(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 part 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. The Chief shall grant such a request for a hearing if he concludes that a public hearing is appropriate after consideration of the criteria in subparagraph 6.8.c.A. 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~~responded to 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 subparagraph 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 changes~~. The statement of basis shall be sent to the applicant, and, ~~on request~~ to any other person upon request.

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 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 U.S. 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~~paragraph 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 paragraph 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. U.S. 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§ 505 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 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~~ fifteen (15) 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~~ eighteen (18) dollars per ton subject to an adjustment enumerated in paragraph 8.1.c, for actual emissions of all regulated air pollutants (for fee calculation) discharged during the most recent calendar year or portion thereof.

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

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~~ § 404 of the Clean Air Act 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 under § 404 of the Clean Air Act 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.-7651e~~ § 404 of the Clean Air Act and other affected units, under ~~subchapter~~ Title IV Acid-Deposition-Control of the Clean Air Act (Acid Deposition Control), continue to be subject to fees under 45CSR22 for the entire facility until the period beginning January 1, 2000, and are subject to fees for such other affected units calculated in accordance with paragraphs 8.1.a and 8.1.b of this rule.

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

8.3. Minimum fees. Any non-major source required to have a Title V operating permit ~~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 for each fiscal year under the fee schedule in ~~subsection~~ paragraph 8.1.b shall be increased by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989~~93~~. 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

b. The revision of the Consumer Price Index, if any, which is most consistent with the Consumer Price Index for 1989~~93~~ 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

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

8.87. 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 2.313 and 2.324 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~~ the Chief determines 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.

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

§45-30-9. Transition plan.

9.1. The 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.

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

§45-30-10. Enforcement.

10.1. General. The provisions of this 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~~ rule 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~~ W. Va. Code § 16-20-8, 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.

10.4. Tampering prohibited. Pursuant to W. Va. Code § 16-20-8, criminal penalties shall be recoverable against any person who knowingly renders inaccurate any required emission or process monitoring device or method.

~~§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 preconstruction 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 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 preconstruction 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 preconstruction 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 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.~~

§45-30-121. 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.

§45-30-132. Authority of the Chief to Establish Applicable Requirements.

132.1. 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) of the Clean Air Act}.

132.2. 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 (if any) promulgated for such sources by U.S. EPA.

132.3. 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 (if any) promulgated for such sources by U.S. EPA.

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

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

132.56. 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} 112(i)(5)~~ of the Clean Air Act. Such authority shall include the ability to collect emission-based fees under section eight of this rule.

132.67. 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.

§45-30-143. 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.

§45-30-154. 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 preconstruction 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.

TABLE 45-30A.

HAZARDOUS AIR POLLUTANTS

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

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 sulfate	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 sulfate	118741	Hexachlorobenzene
534521	4,6-Dinitro-o-cresol, and salts	87683	Hexachlorobutadiene
51285	2,4-Dinitrophenol	77474	Hexachlorocyclopentadiene
121142	2,4-Dinitrotoluene	67721	Hexachloroethane
123911	1,4-Dioxane (1,4-Diethyleneoxide)	822060	Hexamethylene-1,6-diisocyanate
122667	1,2-Diphenylhydrazine	680319	Hexamethyl-phosphoramide
106898	Epichlorohydrin (1-	110543	Hexane
		302012	Hydrazine

7647010	Hydrochloric acid		diisocyanate (MDI)
7664393	Hydrogen fluoride	101779	4,4'-
	(Hydrofluoric acid)		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-
74839	Methyl bromide		methylurea
	(Bromomethane)	62759	N-
74873	Methyl chloride		Nitrosodimethylamine
	(Chloromethane)	59892	N-Nitrosomorpholine
71556	Methyl chloroform	56382	Parathion
	(1,1,1-	82688	Pentachloro-
	Trichloroethane)		nitrobenzene
78933	Methyl ethyl ketone		(Quintobenzene)
	(2-Butanone)	87865	Pentachlorophenol
60344	Methyl hydrazine	108952	Phenol
74884	Methyl iodide	106503	p-Phenylenediamine
	(Iodomethane)	75445	Phosgene
108101	Methyl isobutyl	7803512	Phosphine
	ketone	7723140	Phosphorus
	(Hexone)	85449	Phthalic anhydride
624839	Methyl isocyanate	1336363	Polychlorinated
80626	Methyl methacrylate		biphenyls (Aroclors)
1634044	Methyl tert butyl	1120714	1,3-Propane sultone
	ether	57578	beta-Propiolactone
101144	4,4-Methylene bis	123386	Propionaldehyde
	(2-chloroaniline)	114261	Propoxur (Baygon)
75092	Methylene chloride	78875	Propylene dichloride
	(Dichloromethane)		(1,2-Dichloropropane)
101688	Methylene diphenyl	75569	Propylene oxide

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
584849	2,4-Toluene diisocyanate	0	(inorganic including arsine)
95534	o-Toluidine	0	Beryllium Compounds
8001352	Toxaphene (chlorinated camphene)	0	Cadmium Compounds
120821	1,2,4- Trichlorobenzene	0	Chromium Compounds
79005	1,1,2-Trichloroethane	0	Cobalt Compounds
79016	Trichloroethylene	0	Coke Oven Emissions
95954	2,4,5-Trichlorophenol	0	Cyanide Compounds ¹
88062	2,4,6-Trichlorophenol	0	Glycol ethers ²
121448	Triethylamine	0	Lead Compounds
1582098	Trifluralin	0	Manganese Compounds
540841	2,2,4- Trimethylpentane	0	Mercury Compounds
		0	Fine mineral fibers ³
		0	Nickel Compounds
		0	Polycyclic Organic Matter ⁴
		0	Radionuclides
		0	(including radon) ⁵
		0	Selenium Compounds

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

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

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

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH₂CH₂)_n-OH. Polymers are excluded from the glycol category.

³Includes 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.

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

⁵A 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)
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hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

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

TABLE 45-30-C

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



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

John M. Ranson
Cabinet Secretary

November 9, 1993

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

Ms. Judy Cooper, Director
Administrative Law Division
Office of the Secretary of State
Building 1 Suite 157K
Capitol Complex
Charleston, WV 25305-0771

RE: 45CSR30 "Requirements for Operating Permits"
Emergency Filing

Dear Ms. Cooper:

As indicated by the Statement of Emergency filed with 45CSR30, this Office is required to submit the Title V operating permit program to U.S.EPA by November 15, 1993. An element of our program submission is an effective rule implementing the program.

Our Office plans to overnight mail the Title V program to U.S.EPA on Friday, November 12, 1993. This action would assure a program submittal by November 15, 1993.

Our Office requests that the approval of 45CSR30 "Requirements for Operating Permits" be expedited to ensure a timely filing with U.S.EPA.

Please note that 45CSR30 has been approved by the West Virginia Air Pollution Control Commission after public hearing. The rule was properly filed with the Legislative Rule-Making Review Committee on August 13, 1993.

Thank you for your cooperation in this matter. If you have any questions, please contact me or Randall Suter at the Office of Air Quality at 558-2275.

Very truly yours,


G. Dale Farley
Chief

GDF/RBS/skm



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

AIR POLLUTION CONTROL COMMISSION
OFFICE OF AIR QUALITY

1615 Washington Street, East Suite 301
Charleston, West Virginia 25311

Telephone: (304) 558-4002
Telefax: 558-1222

November 3, 1993

RECEIVED

G. Dale Farley
Chief
Office of Air Quality
1558 Washington Street East
Charleston, West Virginia 25311

RE: Commission Approval for the
Emergency Filing of 45 C.S.R. 30

Dear Mr. Farley:

In accordance with § 29A-3-15(a), the Commission has approved of the emergency filing of 45 C.S.R. 30 by a majority vote.

As you know, the agency approved proposed rule 45 C.S.R. 30. was filed with the Secretary of State and with the Legislative Rule-Making and Review Committee on August 13, 1993. However, it is my understanding that the status of 45 C.S.R. 30 as an emergency rule is warranted under § 29A-3-15(g).

Please do not hesitate to contact me with your thoughts or concerns regarding this matter.

Very truly yours,

Britt A. Bernheim

cc: APCC Commissioners



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

November 9, 1993

Britt A. Bernheim, Esq.
Secretary, WVAPCC
1615 Washington Street East
Charleston, WV 25311

RE: Agency Approved Rule -- Title 45, Series 30
"Requirements for Operating Permits"

Dear Secretary Bernheim:

G. Dale Farley, Chief of the Office of Air Quality, has advised me that in order for West Virginia to remain in compliance with 1990 Clean Air Act requirements, the subject rule filed by Commission earlier this year should now be adopted on an emergency basis. As a result, pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rule specified above as an emergency rule.

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

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR/GDF/skm

cc: G. Dale Farley
Chief, WVDEP-OAQ

Ann Spaner
Deputy Director, WVDEP

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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FILED