WEST VIRGINIA

SECRETARY OF STATE

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ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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

AGENCY: Air Pollution Control Commission TITLE NUMBER: 45CSR30

CITE AUTHORITY W. Va. Code §16-20-5

AMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

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

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

Britt A. Bernheim, Secretary
Air Pollution Control Commission

46.30

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: August 13, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

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

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

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

June 2, 1993 and July 28, 1993

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

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

Office of Air Quality Mailing List.

c. Date of hearing(s): July 6, 1993

August 9, 1993

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

Attached X No comments received

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

August 13, 1993

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

G. Dale Farley, Chief

Office of Air Quality

Phone: 558-2275

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

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

N/A

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

45CSR30

SUMMARY

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

The operating permit program is directed toward major sources and sources as defined in the rule, and must contain the following: requirements for permit applications; monitoring and reporting requirements; annual fees to cover all reasonable costs required to develop and administer the program; adequate personnel and funding to administer the program; adequate authority for the agency to administer the program; adequate, streamlined, and reasonable procedures, including public comment and hearing; provisions to ensure against unreasonable delay by the permitting authority by allowing judicial review of untimely actions; adequate provisions for public participation; provisions to revise permits consistent with new standards; and operational flexibility within the permit provisions. These elements have been further refined and defined under the provisions of Title V and 40CFR70.

Failure to submit a Title V operating permit program would result in sanctions pursuant to 42 U.S.C. 7509(b). Such sanctions may include prohibitions on the approval by the Secretary of Transportation of any projects or grants (Highway Sanctions) and/or emissions offsets for new or modified sources of emissions units requiring at least two (2) to one (1).

This rule will be submitted to U. S. EPA as the key part of the requirement for the Title V operating permit program.

45CSR30

TITLE 45
LEGISLATIVE RULES
AIR POLLUTION CONTROL COMMISSION

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.~~1~~2. "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.~~2~~3. "Affected states" are all States:

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

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

2.~~3~~4. "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).

14.30

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 Ppart 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 ~~3~~12.1, ~~3~~12.2, and ~~3~~12.3 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 these 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 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;

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. 7511c~~§ 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.

2.25~~7~~."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.

2.3~~8~~4. "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 2.2~~4~~5.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.

2.3~~3~~5."Relocation" means the physical movement of a source outside its existing plant boundaries.

2.3~~4~~6."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.

2.3~~6~~9."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.

2.3~~7~~40. "Source" or "Stationary source" means, for the purpose of this rule, any building, structure, facility, or installation that emits or may emit any air pollutant.

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

2.3~~8~~42. "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.

2.3~~9~~44. "Volatile organic compound" (VOC) means any organic compound that participates in atmospheric photochemical reactions. This includes any organic compound other than the following exempt compounds: methane, ethane, methyl chloroform (1,1,1-trichloromethane), CFC-113 (trichlorotrifluoroethane), methylene chloride, CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane), CFC-22 (chlorodifluoromethane), CFC-23 (trifluoromethane), CFC-114 (dichlorotetrafluoroethane), CFC-115 (chloropentaflouroethane), HCFC-123 (dichlorotrifluoroethane), HFC-134a (tetrafluoroethane), HCFC-141b (dichlorofluoroethane), HCFC-142b (chlorodifluoroethane), HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane), HFC-125 (pentafluoroethane, HFC-134 (1,1,2,2-tetrafluoroethane), HFC-143a (1,1,1-trifluoroethane), HFC-152a (1,1-difluoroethane), and perfluorocarbon compounds which fall into these classes:

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,

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

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

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.

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

(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) 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--r~~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:

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.

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

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;

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

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

(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;

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;

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.

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

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~~T~~he 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~~ eEach 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

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 these rules.~~ No permittee may make any changes which would require preconstruction reivew 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.

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 those rules~~pursuant to the provisions of this subsection.

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY
State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

June 2, 1993

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

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

45CSR30 - "Requirements for Operating Permits"

Dear Ms. Bernheim:

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

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

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

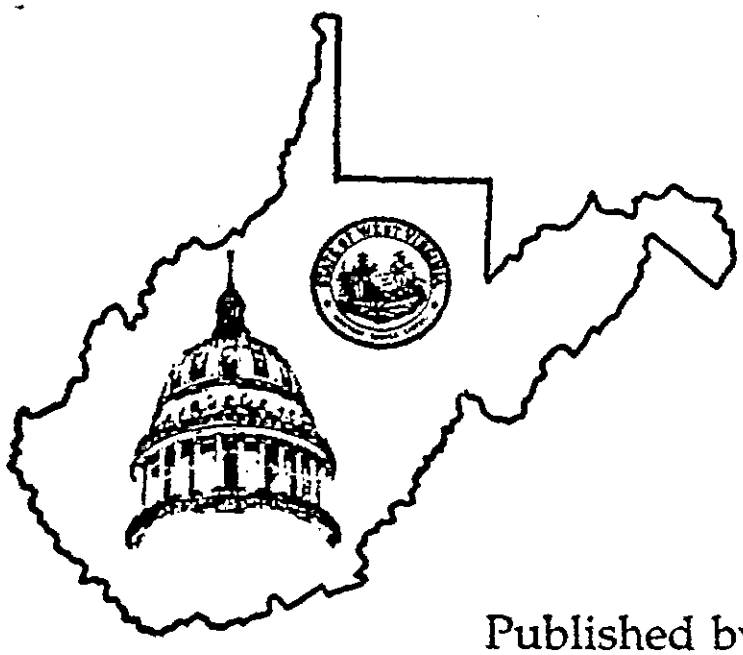
Sincerely yours,

John M. Ranson
Cabinet Secretary

JMR:ro

t:\air6-2.rul

45CSR30



WEST VIRGINIA REGISTER

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Administrative Law Division

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Director

Missy Phalen
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Administrative Assistants

Secretary of State
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CONTENTS

SECRETARY OF STATE

KEN HECHLER

MINISTRATIVE LAW DIVISION

FILED

Jun 2 4 43 PM '93

OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Air Pollution Control Commission TITLE NUMBER: 45CSR30

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

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

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

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

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

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Britt A. Bernheim, Secretary
Air Pollution Control Comm.
1615 Washington Street, East
Charleston, WV 25311

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

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

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

Britt A. Bernheim, Secretary

Gaston Caperton
Governor

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

FILED

Jun 1 11 08 AM '93

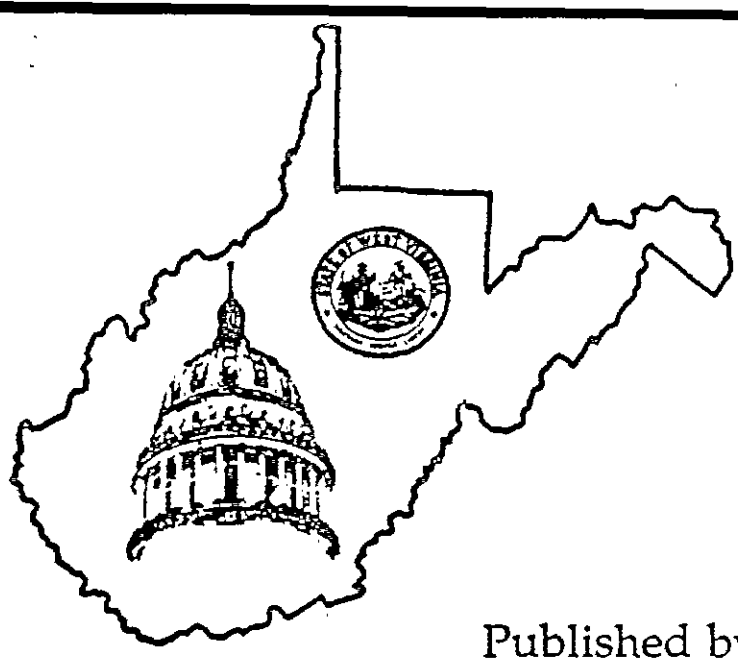
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

O R D E R

According to the provisions of Section 9.8 of Fees for Services, 64 CSR 51, the Division of Health hereby approves and files with the Secretary of State the attached schedule of fees for services to be charged by the Monongalia County Board of Health. These fees should be incorporated as Appendix §64-51-5.32 of the rule.

Ruth Ann Panepinto, Ph.D., Secretary
Department of Health and Human Resources

July 6, 1993 Agenda



WEST VIRGINIA REGISTER

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CONTENTS

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
1558 Washington Street, East
Charleston, WV 25311-2599

n Caperton
overnor
M. Ranson
d Secretary

David C. Callaghan
Director
Ann A. Spener
Deputy Director

AGENDA

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION
Conference Room

1558 Washington Street, East
Charleston, West Virginia 25311

July 6, 1993
9:00 a.m.

I. HEARINGS ON PROPOSED RULES

1. 45CSR28 "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (continuation of January 7, 1993 hearing)

2. 45CSR30 "Requirements for Operating Permits"

3. 45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation"

4. 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"

5. 45CSR15 "Emission Standards for Hazardous Air Pollutants"

6. 45CSR16 "Standards of Performance for New Stationary Sources"

7. 45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

8. 45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"

II. COMMISSION MEETING

1. Final Adoption of Rules Authorized by the Legislature.

   a. 45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"

   b. 45CSR14 "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration"

OTHER

   c. 45CSR19 "Requirements for Pre-Construction Review, Determination of Emission Offsets for Proposed New or Modified Stationary Sources of Air Pollutants and Emission Trading for Intrasource Pollutants"

   d. 45CSR21 "Regulation to Prevent and Control Air Pollution from the Emission of Volatile Organic Compounds"

   e. 45CSR29 "Regulation Requiring the Submission of Emission Statements for Volatile Organic Compound Emissions and Oxides of Nitrogen Emissions"

   f. 45CSR31 "Confidential Information"

   g. 45CSR32 "Serious and Minor Violations of Applicable Rules"

2. Election of Chairman.*

3. Election of Vice-Chairman.*

4. Appointment of Secretary.*

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

*The following is quoted from the West Virginia Air Pollution Control Law of West Virginia, 16-20-4:

> At its first meeting the Commission shall elect from its membership a chairman, and at the first meeting in each fiscal year thereafter the Commission shall elect from its membership a chairman to act during such fiscal year. At similar times the Commission shall elect from its membership a vice-chairman and appoint a secretary. The secretary need not be a member of the Commission.

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

AGENDA

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION
Conference Room

1558 Washington Street, East
Charleston, West Virginia 25311

July 6, 1993
9:00 a.m.

OFFICE OF WEST VIRGINIA SECRETARY OF STATE
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Administrative Law Division

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CONTENTS

MEETING NOTICES
Open Government Proceedings Act
§6-9A-1

AGENCY	DATE FILED	PURPOSE	MEETING DATE/LOCATION
Air Pollution Control Comm.	7/28/93	Final consideration of proposed rules Title 45-7, 10, 13, 15, 16, & 30 & other business	August 9, 1993, 9:00 a.m. 1558 Washington St. E. Charleston, WV
Barbers & Cosmetologists, Bd. of	7/29/93	Executive meeting	August 8, 1993, 6:00 p.m. Holiday Inn 100 Lodgeville Rd. Clarksburg, WV
Coal Mine Health & Safety, Bd. of	7/29/93	Regular monthly meeting	August 10, 1993, 9:00 a.m. Lakeview Resort & Conference Center Morgantown, WV
Commercial Hazardous Waste Mngt. Facility Siting Bd.	7/14/93	To receive public comment on draft regulations and respond to same.	August 10, 1993, 9:00 p.m. Ofc. of Air Quality 1558 Washington St. Charleston, WV
Consolidated Public Retirement Bd.	7/7/93	Regular business	August 5, 1993, 10:00 a.m. Gov.'s Con. Rm. State Capitol, Suite 157J Charleston, WV
Directors, State College & Univ. Systems Bd. of	7/22/93	Emergency meeting by conference call for purpose of adopting policy for payment of fees by credit cards & installment payments	July 22, 1993, 4:00 p.m. 10th Fl. Con. Rm. 1019 Kanawha Blvd. E. Charleston, WV
Educational Broadcasting Authority	7/20/93	Not specified	August 5, 1993, 1:00 p.m. Studios of WSWP-TV Beckley, WV

*Meeting Notice Does Not Comply With Open Government Proceeding Act

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

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

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

A G E N D A

WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

Office of Air Quality Conference Room
1558 Washington Street East
Charleston, West Virginia 25311

August 9, 1993
9:00 a.m.

I. FINAL CONSIDERATION OF PROPOSED RULES

1. 45 CSR 30 "Requirements for Operating Permits"

2. 45 CSR 13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation."

3. 45 CSR 25 "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities."

4. 45 CSR 15 "Emission Standards for Hazardous Air Pollutants."

5. 45 CSR 16 "Standards of Performance for New Stationary Sources."

6. 45 CSR 7 "To Prevent and Control Particulate Air Pollution from Manufacturing Process Operations."

7. 45 CSR 10 "To Prevent and Control Air Pollution form the Emission of Sulfur Oxides."

II. COMMISSION MEETING

Such other business as the Commission deems timely and appropriate.

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

David C. Callaghan
Director
Ann A. Spaner
Deputy Director

May 21, 1993

The Clarksburg Exponent
Legal Ad Department
P. O. Box 2000
Clarksburg, WV 26301

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley 25m

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
1558 Washington Street, East
Charleston, WV 25311-2599

Gaston Caperton
Governor

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David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Donna Riggs
Secretary
WV Air Pollution Control Commission
North Central Regional Office
109 Adams Street, Room M-2
Fairmont, West Virginia 26554-2800

Dear Ms. Riggs:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley 2sm

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

May 21, 1993

Charleston Daily Mail
Legal Ad Department
1001 Virginia Street, East
Charleston, WV 25301

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Jeanne Chandler
Librarian
WV Air Pollution Control Commission
1558 Washington Street, East
Charleston, WV 25311

Dear Ms. Chandler:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley 2am

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

May 21, 1993

The Herald-Dispatch
Legal Ad Department
P. O. Box 2017
Huntington, WV 25720

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Mr. Matt Onion
Cabell County Public Library
455 9th Street Plaza
Huntington, West Virginia 25701

Dear Mr. Onion:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

May 21, 1993

The Parkersburg News
Legal Ad Department
519 Juliana Street
Parkersburg, WV 26102

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley dsm

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Dorothy Chittum
Librarian
Parkersburg/Wood County Public Library
3100 Emerson Avenue
Parkersburg, West Virginia 26104

Dear Ms. Chittum:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

May 21, 1993

The Wheeling News-Register and
Intelligencer
Legal Ad Department
1500 Main Street
Wheeling, WV 26003

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Judith Tredway
Regional Engineer
WV Air Pollution Control Commission
Northern Panhandle Regional Office
1911 Warwood Avenue
Wheeling, West Virginia 26003

Dear Ms. Tredway:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

May 21, 1993

Elkins Inter-Mountain
Legal Ad Department
P. O. Box 1339
Elkins, WV 26241

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Elkins-Randolph County Public Library
c/o Librarian
416 Davis Avenue
Elkins, West Virginia 26241

Dear Librarian:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

May 21, 1993

Mineral Daily News Tribune
Legal Ad Department
P. O. Box 879
Keyser, West Virginia 26726

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley 23m

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Karen Hiser
Librarian
Keyser-Mineral County Public Library
105 North Main Street
Keyser, West Virginia 26726

Dear Ms. Hiser:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

May 21, 1993

The Evening/Weekend Journal
Legal Ad Department
207 West King Street
Martinsburg, WV 25401

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley 23m

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Peggy Y. Batten
Librarian
Martinsburg-Berkeley County Public Library
101 West King Street
Martinsburg, West Virginia 25401

Dear Ms. Batten:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director
Ann A. Spaner
Deputy Director

May 21, 1993

Beckley Register/Herald
Legal Ad Department
P. O. Drawer P
Beckley, WV 25801

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley 2sm

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Susan Vidovich
Librarian
Raleigh County Public Library
P. O. Box 1876
Beckley, West Virginia 25802

Dear Ms. Vidovich:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director
Ann A. Spaner
Deputy Director

May 21, 1993

The Record Delta
Legal Ad Department
P. O. Box 550
Buckhannon, WV 26201

Dear Sir:

Please publish the enclosed "Notice of Public Hearing" as a Class II legal advertisement once a week for two (2) successive weeks. Please note that the publications must occur within a period of fourteen consecutive days with at least an interval of six full days between the dates of first and second publication date. The second publication of this Notice must occur on or before June 5, 1993

Please submit your invoice and a tear sheet to the attention of Ms. Nadine Sitton, 1558 Washington Street East, Charleston, West Virginia 25311.

Sincerely yours,

Dale Farley 28m

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosure

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

June 4, 1993

Ms. Ruth B. Six
Librarian
Gassaway Public Library
100 Birch Street
Gassaway, West Virginia 26624

Dear Ms. Six:

On Tuesday, July 6, 1993 the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules: 45CSR7, 45CSR10, 45CSR13, 45CSR15, 45CSR16, 45CSR25, 45CSR28 and 45CSR30. Please retain the enclosed documents for public review until after the July 6th hearing. Also, please have any interested party sign the enclosed register and return the register and any correspondence you may have regarding the proposed legislative rules.

Thank you very much for your cooperation and assistance in this matter. If you have any questions, please direct them to Tammy Mowrer at (304) 558-2275.

Sincerely yours,

Dale Farley dsm

Dale Farley
Chief, Office of Air Quality

DF/tlm

Enclosures

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

David C. Callaghan
Director

Ann A. Spaner
Deputy Director

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5	"To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"
45CSR7	"To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"
45CSR10	"To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"
45CSR13	"Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation"
45CSR15	"Emission Standards for Hazardous Air Pollutants"
45CSR16	"Standards of Performance for New Stationary Sources"
45CSR25	"To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
45CSR28	"Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (continuation of January 7, 1993 hearing)
45CSR30	"Requirements for Operating Permits"

Upon authorization and promulgation of revisions to the following rules, 45CSR5, 45CSR7, 45CSR10, 45CSR13, and 45CSR28 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation, 45CSR30 will be submitted to the U.S. Environmental Protection Agency as the rule establishing a comprehensive air quality permitting system consistent with Title V of the federal Clean Air Act Amendments of 1990.

Upon authorization and promulgation of revisions to 45CSR15 and 45CSR16, which adopts by reference federal standards for certain regulated pollutants and sources, the Office of Air Quality will seek federal delegation from the U.S. Environmental Protection Agency to enforce the revised standards.

Upon authorization and promulgation of 45CSR25, the rule will be submitted to U.S. EPA as part of the State Hazardous Waste Management Program.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to Britt A. Bernheim, Commission Secretary, at the address below:

Britt A. Bernheim, Secretary
West Virginia Air Pollution Control Commission
1615 Washington Street East
Charleston WV 25311
(304) 558-4002

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the 1 .

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Sandra Bias OF

THE DAILY MAIL, A DAILY REPUBLICAN NEWSPAPER, PUBLISHED IN THE CITY OF CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA, DO SOLEMNLY SWEAR THAT THE ANNEXED

NOTICE OF: LEGISLATIVE RULES

WAS DULY PUBLISHED IN SAID PAPER(S) ON THE DATES LISTED BELOW, AND WAS POSTED AT THE FRONT DOOR OF TH COURT HOUSE OF SAID KANAWHA COUNTY, WEST VIRGINIA, ON THE

28TH DAY OF MAY , 1993 .

DATES PUBLISHED:

05/27/93 DAILY MAIL 06/03/93 DAILY MAIL

SUBSCRIBED AND SWORN TO BEFORE ME THIS

4TH DAY OF JUNE , 1993 .

Sarah J Withrow

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE : 90.34

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
SARAH J. WITHROW
1001-T LINCOLN DRIVE
SO. CHARLESTON, WV 25309
My Commission Expires April 28, 2003

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5 - "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"

45CSR7 - "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

45CSR10 - "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"

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

45CSR15 - "Emission Standards for Hazardous Air Pollutants"

45CSR16 - "Standards of Performance for New Stationary Sources"

45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR28 - "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities"

45CSR30 - "Requirements for Operating Permits"

Upon authorization and promulgation of revisions to the following rules, 45CSR5, 45CSR7, 45CSR10, 45CSR13, and 45CSR28 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation, 45CSR30 will be submitted to the U.S. Environmental Protection Agency as the rule establishing a comprehensive air quality permitting system consistent with Title V of the federal Clean Air Act Amendments of 1990.

Upon authorization and promulgation of revisions to 45CSR15 and 45CSR16, which adopts by reference federal standards for certain regulated pollutants and sources, the Office of Air Quality will seek federal delegation from the U.S. Environmental Protection Agency to enforce the revised standards.

Upon authorization and promulgation of 45CSR25, the rule will be submitted to U.S. EPA as part of the State Hazardous Waste Management Program.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to Britt A. Bernheim, Commission Secretary, at the address below:

Britt A. Bernheim,
Secretary
West Virginia Air Pollution
Control Commission
1615 Washington Street East
Charleston, WV 25311
(304) 558-4002

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of
Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Library of the Office of Air Quality located at the address above.

(124995)

LEGAL ADVERTISEMENT

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal preparation Plants and Coal Handling Operations"
45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"
45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"
45CSR13 "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Pemits, General Permits, and Procedures for Evaluation"
45CSR15 "Emission Standards for Hazardous Air Pollutants"
45CSR16 "Standards of Performance for New Stationary Sources"
45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
45CSR28 "Regulation to Prevent and Control Air Pollutin From the Emission of Volatile Organic Companounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilites"
45CSR30 "Requirements for Operating Permits"

Upon authorization and promulgation of revisions to the following rules, 45CSR5, 45CSR7, 45CSR10, 45CSR13, and 45CSR28 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation, 45CSR30 will be submitted to the U.S. Environmental Protection Agency as the rule establishing a comprehensive air quality permitting system consistent with Title 5 of the federal Clean Air Act Amendments of 1990.

Upon authorization and promulgation of revisions to 45CSR15 and 45CSr16, which adopts by reference federal standards for certain regulated pollutants and sources, the Office of Air Quality will seek federal delegation fromthe U.S. Environmental Protection Agency to enforce the revised standards.

Upon authorization and promulgation of 45CSR25, the rule will be submitted to U.S. EPA as part of the State Hazardous Waste Management Program.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to Britt A. Bernheim, Commission Secretary, at the address below:

Britt A. Bernheim, Secretary
West Virginia Air Pollution Control Commission
1615 Washington Street East
Charleston, WV 25311
(304) 558-4002

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Office of Air Quality, Northern Panhandle Regional Office, 1911 Warwood Avenue, Wheeling, WV.

Intel., May 28, June 4
N.R., May 28, June 4

STATE OF WEST VIRGINIA,
COUNTY OF OHIO.

I, Bonnie Mattern *for the publisher of the*

WHEELING NEWS-REGISTER
~~*WHEELING INTELLIGENCER*~~ *newspapers published in the CITY OF*

WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

May 28, June 4, 1993

commencing on the 28 *day of* May, *19* 93

Given under my hand this 8 *day of* June, *19* 93

Bonnie Mattern

Sworn to and subscribed before me this 8th *day of* June *19* 93 *at WHEELING, OHIO COUNTY, WEST VIRGINIA*

Linda E Miller

Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA.

My Commission expires August 9, 2002

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LINDA E. MILLER
67 E. Frazier Avenue
Wheeling, West Virginia 26003
My Commission Expires Aug. 9, 2002

LEGAL ADVERTISEMENTS

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:
45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"
45CSR7 "To Prevent and Control Particulate Air Pollution from Manufacturing Process Operations"
45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"
45CSR13 "Permits for Construction, Modification, Relocation and Operation of Sanitary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation"
45CSR15 "Emission Standards for Hazardous Air Pollutants"
45CSR16 "Standards of Performance for New Stationary Sources"
45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
45CSR28 "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities"
(continuation of January 7, 1993 hearing)
45CSR30 "Requirements for Operating Permits"

Upon authorization and promulgation of revisions to the following rules, 45CSR5, 45CSR7, 45CSR10,45CSR13, and 45CSR28 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation, 45CSR30 will be submitted to the U.S. Environmental Protection Agency as the rule establishing a comprehensive air quality permitting system consistent with Title V of the federal Clean Air Act Amendments of 1990.

Upon authorization and promulgation of revisions to 45CSR15 and 45CSR16, which adopts by reference federal standards for certain regulated pollutants and sources, the Office of Air Quality will seek federal delegation from the U.S. Environmental Protection Agency to enforce the revised standards.

Upon authorization and promulgation of 45CSR25, the rule will be submitted to U.S. EPA as part of the State Hazardous Waste Management Program.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to Britt A. Bemheim, Commission Secretary, at the address below:

Britt A. Bemheim, Secretary
West Virginia Air Pollution
Control Commission
1615 Washington Street East
Charleston, WV 25311
(304) 558-4022

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Parkersburg/Wood County Public Library, 3100 Emerson Avenue, Parkersburg, West Virginia.

May 28 N
June 4 N

MARCIA MOORE

being first duly sworn, says that the

notice of public hearing-- JULY 6th

hereto attached was printed in the Parkersburg News a daily newspaper published in the City of Parkersburg, Wood County, West Virginia, and posted at the front door of the Court House for two successive weeks, the first publication ~~and posting~~ thereon being on the 28th day of MAY 19 93, and subsequent publication on the 4th day of JUNE 1993, the ..... day of ..... 19 ....., the ..... day of ..... 19 ....., the ..... day of ..... 19 ....., and the ..... day of ..... 19 .....

Printer's Fee $ 73.23

6½ " x103= 669.5 words @ 10.9375 Marcia Moore

Subscribed and sworn to before me this 4th day of June 1993.

Notary Public for Wood County, West Virginia

My commission expires July 25 1994

Parkersburg Printing Co. - 5/71

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal PReparation Plants and Coal Handling Operations"

45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"

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

45CSR15 "Emission Standards for Hazardous Air Pollutants"

45CSR16 "Standards of Performance for New Stationary Sources"

45CSR "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compunds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (continuation of January 7, 1993 hearing)

45CSR30 "Requirements for Operating Permits"

Upon authorization and promulgation of revisions to the following rules, 45CSR5, 45CSR10, 45CSR13, and 45CSR28 will be submitted to the U.S. Environmental Protection AGency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation, 45CSR30 will be submitted to the U.S. Environmental Protection Agency as the rule establishing a comprehensive air quality permitting system consistent with Title V of the federal Clean Air Act Amendments of 1990.

Upon authorization and promulgation of revisions to 45CSR15 and 45CSR 16, which adopts by reference federal standards for certain regulated pollutants and sources, the Office of Air Quality will seek federal delegation from the U.S. Environmental Protection Agency to enforce the revised

Upon authorization and promulgation of 45CSR25, the rule will be submitted to U.S. EPA as part of the State Hazardous Waste Management Program.

The hearing will be held in the Commission's Confernece Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to Britt A. Bernheim, Commission Secretary, at the address below:

Britt A. Bernheim,
Secretary
West Virginia
Air Pollution
Control Commission
1615 Washington St. E.
Charleston, WV 25311
(304) 558-4002

Copies of such written comments should also be sent to:
G. Dale Farley
Office of
Air Quality
Division of
Environmental
Protection
1558 Washington St. E.
Charleston, WV
25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Cabell County Public Library, 455 9th Street Plaza, Huntington, WV.

LH-696 5-28,6-4,93

AFFIDAVIT OF PUBLICATION

VIRGINIA,
LL, TO-WIT:

ippold being first duly sworn, depose and say for The Herald-Dispatch, a corporation, who publishes at Huntington, Virginia, the newspaper: The Herald-Dispatch, a independent newspaven days each week, Monday through Sunday including New Year's e Fourth of July, Labor Day, Thanksgiving and Christmas; that I have y the Board of Directors of such corporation to execute this affidavit of ehalf of such corporation and the newspaper mentioned herein; that the ached in the left margin of this affidavit and made a part hereof and 696 was duly published in

patch

k for 2 successive weeks, commencing with its issue of the ay ,19 93 , and ending with the issue of the 4th day 19 93 , and was posted at the East door of Courthouse of May, 19 93 ; that said legal advertisement was owing dates: May 28, 1993

Jun3 4, 1993

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

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

Connie Rappold

Taken, subscribed and sworn to before me in my said county this 4th day of June , 19 93

y commission expires May 13, 2002

Carolyn A. Grass
Notary Public
Cabell County,
West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
CAROLYN A. GRASS
HC 69, BOX 95 - B
CRAB CREEK RD.
HENDERSON, WV 25106
MY COMMISSION EXPIRES MAY 13, 2002

10M Form A-135 (867H)

WV DEPT. OF NATURAL RESOURCES
AIR POLLUTION CONTROL
JUN 10 11 AM '93
RECEIVED

AFFIDAVIT OF PUBLICATION

WV DIV OF ENVIR PROT
OFFICE OF

BECKLEY NEWSPAPERS INC.

1993 JUN -4 A 10:01

BECKLEY, WEST VIRGINIA 25801

RECEIVED

June 3, 19 93

STATE OF WEST VIRGINIA
COUNTY OF RALEIGH, to wit:

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

of Public Hearing
(Description of notice)

was duly published in said newspaper once a week for two successive weeks (Class II), commencing with the issue of the 27th day of may, 1993, and ending with the issue of the 3rd day of June, 1993, (and was posted at the

_____

on the _____ day of _____); that said annexed notice was published on the following dates: _____

5/27 & 6/3/93 and that the cost of publishing said annexed notice as aforesaid was $ 63.74.

Signed R. E. Zutaut
Robert E. Zutaut, Advertising Manager
Beckley Newspapers

Taken, subscribed and sworn to before me in my said county this

3rd day of June 19 93

My commission expires March 27, 2001

Diana L. Sloan
Notary Public of Raleigh County, West Virginia

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
DIANA L. SLOAN
BECKLEY NEWSPAPER
P. O. DRAWER P OR R
BECKLEY, WV 25801

R/H

COPY OF PUBLICATION

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5 "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"

45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

45CSR10 "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"

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

45CSR15 "Emission Standards for Hazardous Air Pollutants"

45CSR16 "Standards of Performance for New Stationary Sources"

45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR28 "Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (continuation of January 7, 1993 hearing)

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Upon authorization and promulgation of revisions to the following rules, 45CSR5, 45CSR7, 45CSR10, 45CSR13, and 45CSR28 will be submitted to the U.S. Environmental Protection Agency for incorporation into the West Virginia Implementation Plan under the federal Clean Air Act.

Upon authorization and promulgation, 45CSR30 will be submitted to the U.S. Environmental Protection Agency as the rule establishing a comprehensive air quality permitting system consistent with Title V of the federal Clean Air Act Amendments of 1990.

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Upon authorization and promulgation of 45CSR25, the rule will be submitted to U.S. EPA as part of the State Hazardous Waste Management Program.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to Britt A. Bernheim, Commission Secretary, at the address below:

Britt A. Bernheim, Secretary
West Virginia Air Pollution Control Commission
1615 Washington Street East
Charleston, WV 25311
(304) 558-4002

Copies of such written comments should also be sent to:
G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Raleigh County Public Library, P.O. Box 1876, Beckley, WV.

6-3-THu-2-RH

PUBLISHER'S CERTIFICATE

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5 "To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants and Coal Handling Operations"

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Britt A. Bernheim, Secretary
West Virginia Air Pollution Control Commission
1615 Washington Street East
Charleston, WV 25311
(304) 558-4002

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Office of Air Quality, North Central Regional Office, 109 Adams Street, Room M-2, Fairmont, WV.

VS.

STATE OF WEST VIRGINIA,

COUNTY OF HARRISON

I, Deborah S. Veltri

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

Notice of Public Hearing

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

commencing on the 26 day of May 19 93

and ending on the 2 day of June 19 93

The publisher's fee for said publication is $ 39.29

Given under my hand this 2 day of June 19 93

Deborah S Veltri
Classified Office Mgr. of The Clarksburg Exponent

SEAL

Subscribed and sworn to before me this 2 day of June, 19 93

Notary Public in and for Harrison County, WV.

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

Form CA-15 E

I, as an officer of the News-Tribune, a daily newspaper published at Keyser, Mineral County, West Virginia, hereby certify that the Notice of Public Hearing in the case of WV Air Pollution Control Commission

vs.

a copy whereof is hereto annexed has been published for 2 consecutive weeks in said NEWS-TRIBUNE, the first publication being on the 26th day of, May 19 93.

Given under my hand at Keyser this 2nd day of June, 19 93.

Judith Haywood
Publisher

Publisher's Fee
$ 64.31

NOTICE OF PUBLIC HEARING

On Tues., July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5	"To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"
45CSR7	"To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"
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45CSR13	"Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation"
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Britt A. Bernheim, Secretary
West Virginia Air Pollution Control Commission
1615 Washington Street East,
Charleston, WV 25311 (304) 558-4002

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Keyser-Mineral County Public Library, 105 North Main Street, Keyser, WV.

5:26

State of West Virginia, County of Upshur, ss:

........................Mark Davis..................Advertising Manager Record Delta, a newspaper published at Buckhannon in the said county, do hereby certify that the annexed ....

.Notice of Public Hearing.......................................
West Virginia Air Pollution Control Commission

was published once a week for .(2). Two.................successive weeks in said Record Delta newspaper published as aforesaid, commencing on the 28th day of .May and the 4th day of June, 1993...... days of 19...............

Given under my hand this 6th day of August... day of 1993..............

....[signature]...........................Advertising Manager

Printers fee $ 54.34..................

WEST VIRGINIA, UPSHUR COUNTY, TO-WIT:

Subscribed and sworn to before me this 6th day of August ... of 19..93...

.... [signature]...............Notary Public.

My Commission expires [illegible]...

OFFICIAL SEAL NOTARY PUBLIC STATE OF WEST VIRGINIA PHYLLIS J. [illegible] [illegible] My Commission Expires May 26, 2003

NOTICE OF PUBLIC HEARING

[illegible]

This is an affidavit done today to show ad ran. JR.

State of West Virginia, County of Randolph, ss.

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5 — "To Prevent and Control Air Pollution From the Operation of Coal Preparation Plants and Coal Handling Operations"

45CSR7 — "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

45CSR10 — "To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"

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

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Britt A. Bernheim, Secretary
West Virginia Air Pollution
Control Commission
1615 Washington Street East
Charleston, WV 25311
(304)558-4002

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of Environmental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Elkins-Randolph County Public Library, 416 Davis Avenue, Elkins, WV.

5—26, 6—2

nia

)2

WV DIV OF ENVIR.
NOTICE OF AIR

1993 JUN -3

RECEI

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

May 26 June 02

19 93 as required by law.

Given under my hand this 02 day of June 19 93

James Hoffman
Publisher

Printer's Fee: $ 73.01

e me this 02 day of June, 19 93.

Shirley A. Moreau
Notary Public

15 day of April 2002

NOTICE OF PUBLIC HEARING

On Tuesday, July 6, 1993, beginning at 9 a.m., the West Virginia Air Pollution Control Commission will hold a public hearing on the following proposed legislative rules:

45CSR5
"To prevent and Control Air Pollution From the Operation of Coal Preperation Plants and Coal Handling Operations"

45CSR7
"To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations"

45CSR10
"To Prevent and Control Air Pollution From the Emission of Sulfur Oxides"

45CSR13
"Permits for Contruction, Modification, Relocation and Operation ofStationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation"

45CSR15
"Emission Standards for Hazardous Air Pollutants"

45CSR16
"Standards of Performances for New Stationary Sources"

45CSR25
"To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"

45CSR28
"Regulation to Prevent and Control Air Pollution From the Emission of Volatile Organic Compounds From Vehicle Refueling Emissions at Gasoline Dispensing Facilities"
(continuation of January 7, 1993, hearing)

45CSR30
"Requirements for Operating Permits"

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Upon authorization and promulgation, 45CSR30 will be submitted to the U.S. Enviromental Protection Agency as the rule establishing a comprehensive air quality permitting system consistent with Title V of the federal Clean Air Act Amendments of 1990.

Upon authorization and promulgation of revisions to 45CSR15 and 45CSR16, which adopts by reference federal standards for certain standards for certain regulated pollutants and sources, the Office if Air Quality will seek federal delegation from the U.S. Enviromental Protection Agency to enforce the revised standards.

Upon authoriaztion and promulgation of 45CSR25, the rule will be submitted to U.S. EPA as part of the State Hazardous Waste Management Program.

The hearing will be held in the Commission's Conference Room at 1558 Washington Street, East, Charleston, West Virginia. The hearing is open to the public. Written and oral testimony by all interested parties will be accepted and made part of the record. All questions and comments concerning the proposed rules should be directed to Britt A. Berheim, commission Secretary, at the address below:

Britt A. Berheim, Secretary
West Virginia
Air Pollution
Control Commission
1615 Washington Street East
Charleston, WV 25311
(304) 558-4002

Copies of such written comments should also be sent to:

G. Dale Farley
Office of Air Quality
Division of
Enviromental Protection
1558 Washington Street East
Charleston, WV 25311-2599

Copies of the proposed legislative rules will be available for public review on or before June 4, 1993, at the Martinsburg-Berkeley County Public Library, 101 King Street, Martinsburg, WV 25401.
5:28,6:1,(21)

Certificate of Publication

This is to certify the annexed advertisement

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JULY 6, 1993

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Claudia Banner	APPALACHIAN POWER	ROANOKE, VA
Gary Goess	Capital Cement	Martinsburg WV
Tony Vandenberg	Union Carbide Sistersville WV	→
Bob Parsons	Jackson & Kelly	Charleston WV
Eugene Hogan	Elkem Metals Co	Alloy W. V.
Bob HICE	American Alloys	New Haven, WV
Scott Dominko	DKWM	Pgh Pa
Emil Varney	WOWK-TV 13	Charleston
Charlie Holt	DuPont	Parkersburg
K. B. Poland	Robinson & McElwee	Charleston, WV
Abby M. Cy	Robinson + McEl	Charleston
Richard G. Bain	UNION CARBIDE	S. CHARLESTON
Darl W. Jay	WV DEP	Charleston

COMMISSION MEETING

JULY 6, 1993

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Gary A. Jack	Monongahela Power	Fairmont
Dave Yaussy	Robinson & McElwee	Charleston, WV
Talmadge Hager	Elkem Metals Co.	Alloy, WV
Jim Orvin	SEI	Chas. WV
Charles M. Boothe	Wilton's Chevron	Hgtn WVa.
JACK HARRISON	WV PETROLEUM COUNCIL	CHAS. WV
RANDY RAPP	VIENNA CHEVRON	VIENNA WV
LAWRENCE PIFER	Pifer's Service Center	Mineral Wells
MARVIN GRAY	WV GASOLINE DEALERS	Hunt. WV
Jackie Hallum	ACT	
William D. Lepley	Lepley's Management	St. Albans WV
[illegible]	Capitol Exxon	Chas. WV.
[illegible]	Robinson & McElwee	

COMMISSION MEETING

JULY 6, 1993

NAME	COMPANY AFFILIATION	ADDRESS
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STEVE GUZY	" " "	"
Brian Farkas	DEP	Nitro
Sean R. Sleigh	CNG Transmission Corp.	Clarksburg WV
David M Flannery	Robinson McElwee	Charleston
Bill Raney	WV Coal Association	
CRA Allenbach	Elkem	M.F.V.N.Y.
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Barbara [illegible]	Jackson & Kelly	1600 Laidley Tower

W VA AIR POLLUTION CONTROL COMMISSION MEETING

August 9, 1993

NAME	COMPANY AFFILIATION	ADDRESS
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Y F Clarkson	APS - Monongahela Power	Greensburg, PA
K.G. Beckett	Robinson & McElwee	Chas. WV
W.R. Samples	Wheeling - Pittsburgh Steel	Wheeling, W.V.
K.B. Poland	Robinson & McElwee	Charleston, WV
D. Yaussy	Robinson & McElwee	Charleston WV
Charles T. Alt	DuPont	Parkersburg, WV
Scott Deardorff	Appalachian Power	Chas.
Bob Foster	Chas Ryan Assoc.	Chas

CNG Transmission
Corporation

A CNG COMPANY

June 29, 1993

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

Certified #: P 270 338 837

Subject: Proposed Rule
Requirements for Operating Permits
45CSR30

CNG Transmission Corporation respectfully offers the attached comments regarding the proposed rule - 45CSR30. These rules pose a significant administrative and compliance burden, and your careful consideration of our recommendations is greatly appreciated.

Please call if you have any questions (304-623-8472).

Sincerely,

Robert D. Cotherman, P.E.

cc: S.L. Burkett

Comments
Proposed Rule
45CSR30

45-30-2, 2.24, a, A - For purposes of clarification, "Emissions from any pipeline compressor or pump station" should be revised to "Emissions from any pump station or individual pipeline compressor"

45-30-2, 2.29 - The definition of Potential to Emit should be revised from "under its physical and operational design." To "under its physical and operational design at rated conditions. For reciprocating engines, rated conditions are full load and full speed." This will aid in clarifying potential to emit, particularly in regard to reciprocating engines.

45-30-3, 3.4 - Methods for quantifying fugitives emissions may not be available for all affected sources. Provision should be included for exemption from requirements to quantify fugitives until state and EPA approved protocols are adopted.

45-30-4, 4.1, a, A, b - We strongly recommend that the state attempt to expedite the efforts to secure EPA approval of redesignation of non-attainment areas to avoid potentially unnecessary efforts by the affected sources to submit operating permits, including RACT arguments.

45-30-4, General comment regarding emission standards - Emission caps (mass per unit time) are necessary in lieu of unit specific rate limits (gm/BHP-HR or gm/BTU). Mass emissions rates can be directly related to air quality issues and are easily employed to support a SIP plan. They also provide a convenient method of demonstrating compliance of both individual sources and grouped sources where a total mass emission standard may apply. Unit specific limits, such as gm/BHP–HR or gm/BTU, require that Brake Horsepower or Heat Value be known in addition to the pollutant mass per unit time. The introduction of brake specific or BTU based standards unnecessarily complicate compliance and enforcement efforts.

Emissions caps (mass per unit time) should be established based on the rated performance of the unit: such as full load, full speed and rated temperature for reciprocating engines.

45-30-5, 5.1 c, B, a, D - Specific provisions must be included to allow the use of portable emissions analyzers. This technology is advancing rapidly and many instruments have demonstrated reliable performance with high levels of accuracy. The formal recognition of portable instruments as an acceptable analytical method will greatly enhance our ability to maintain compliance and monitor emissions.

45-30-5, 5.8 - Changes in emissions resulting from variation in operating conditions, excluding equipment modification or fuel switching, must be exempt from the requirement of this section. In particular, any source satisfying the emissions standards at rated conditions must be recognized as having satisfied the permitted emissions standard.

45-30-5, 5.8, c, & 5.9, c - Changes approved under this section must specifically provide incorporation of the permit shield. Disallowing the permit shield significantly increases the exposure of sources to legal repercussion despite the requirement to secure approval for changes.

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

Mr. Randall Suter
Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

Dear Mr. Suter:

The following are my comments on West Virginia's proposed rule 45 CSR 30. Please understand that I did not have time to do as thorough a job as I would have liked (especially with respect to the public participation, conditional minor source and enforcement sections of the rule). Overall, the regulation looks pretty good as I was unable to detect any "show stoppers". However, I do plan to look over the rule more extensively during the 30 day comment period and will submit any further comments to you.

One general comment not mentioned in the following pages is that the rule references the Clean Air Act using two different formats (ex. "subchapter IV Acid Deposition Control of the Clean Air Act" and "Title I of the Clean Air Act".) For purposes of clarification, it would be preferable to use only one format for referencing the Act. Good luck today. Please contact me if you have any questions regarding my comments.

Sincerely,

Jennifer L. Moss

45 CSR 30 Reference	Part 70 Reference	Comments:
2.5	70.2	must be made clear that EPA promulgated standards with future-effective compliance dates are applicable requirements. should define"Title V source" (a source required to obtain a Title V operating Permit)
2.5.a	70.2	Must include language "...approved or promulgated by US EPA..."
2.5.j	70.2	Part 70 gives the Administrator the authority to exempt title VI requirements. The commission may not make determinations which would relax the stringency of a decision made by the Administrator.
	70.2	No mention of requirements to control air pollution from outer continental shelf sources, under section 328 of the Act.
2.5.l	70.2	For purposes of clarification, it would be preferable to reference Section 5.8 of the rule as it pertains to operational flexibility and the program
2.8		Definition is o.k. but the rest of the rule should utilize the 42 U.S.C xxxx format.
2.11		The term "discharge" should be defined.
2.17	70.2	Need to define "air pollutant". (Is it related to the term "air pollution" described in section 2.4) It also needs to be made more clear if West Virginia is planning to expand the scope of its operating permit program to include pollutants other than Regulated Air Pollutants.
2.23		This definition may have to be revised to clarify that all MACT standards are not determined by the chief and are not determined on a case-by case basis as will be done by the state pursuant to section 112(g) and 112(j). Other MACT standards such as those to be promulgated by US EPA in accordance with the schedule developed under 112(e) must also be included in the operating

45 CSR 30 Reference	Part 70 Reference	Comments:
		permit whether the state intends to accept delegation to implement the federal standards or develop and submit its own air toxics program under section 112(l).
2.23.a		Reference to "listed sources" is unclear.
2.23.b		Reference to "listed sources" is unclear.
2.24.a.A	7.2	Need to address future changes to the list . (i.e. lesser quantities established by rule by the Administrator, updates to Table 45-30A etc.)
2.24.b	7.2	The Administrator has the authority to establish by rule major sources of fugitive emissions of a pollutant. Any such ruling the commission makes must be consistent with that ruling or not relax the stringency of it.
2.31.d		see comment 2.24.a.A
3.2.a	7.3(b)	The Administrator will complete a rulemaking to determine how the program should be structured for nonmajor sources. Any deferral the chief makes from the obligation to obtain a Title V operating permit for these sources must be consistent with the Administrator's future rulemaking.
3.2.b		Clarify inconsistent language "exempt" and "deferred"
4.1.a.A.e		Term "emission point" should be defined.
4.1.b		Language "certain permit modifications in subsection 6.5 of this rule" should be clarified (i.e "...permit modifications in 6.5(a) of this rule pertaining to minor modifications"...)
4.3.h.C	70.5(c)(8)(v)	Must have some commitment that when Title IV regulations come out, they will supersede schedules and methods of compluiancethe source will use to achieve compliance with the acid rain emission limitations.

45 CSR 30 Reference	Part 70 Reference	Comments:
5.1		See comment 2.5
5.1.a.C	70.6(a)(1)(iii)	Part 70 provides for alternative emission limits to made if the applicable implementation plan allows. Since the SIP is a subset of the term "applicable requirement", it may not be acceptable to use this language as written in this section. (EPA is reviewing further.)
5.1	70.6(a)(4)(iii)	Allowances must be accounted for according to the procedures established in regulations under Title IV of the Act.
5.2.b	70.6(b)	It is unclear as to what procedures must be followed for permit issuance, revisions and reopenings with respect to state-only requirements.
5.3	70.6(c)(5)(v)	Additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act must be included in permits.
5.4.a	70.6(d)	Should reference public participation procedures provided in section 6.8 of this rule.
5.4.e		The term 'individual permit application" should be defined.
5.4.e.A		This section is unclear. The term 'source-specific" permit should be defined.
5.5	70.6(f)(3)(i) 70.6(f)(3)(iv)	These part 70 provisions should be addressed.
5.8.b	70.4(b)(12)	Comment for section 5.1.a.C is applicable.
5.9.e	70.4(b)(15)	Part 70 provisions state that "off-permit" changes may not be made for any changes subject to title IV requirements. Language must be changed to clarify that such changes will not be made without a permit revision.
6.1.b	70.7(a)(2)	There is no exception for different permit processing time requirements as may be defined in

45 CSR 30 Reference	Part 70 Reference	Comments:
		title IV regulations.
6.1.e	70.7(a)(5)	For purposes of clarification, the following is a suggested change to the draft language: "Following receipt... ...public comment. In accordance with subsection 6.9, the chief shall...."
6.4.b	70.7(d)(vi) 70.7(d)(2)	These part 70 provisions should be addressed.
6.5	70.7(e)	This part 70 provision should be addressed.
6.5.a.A.E		It should be made clear that modifications under any provisions of Title I of the Act do not qualify for minor source modification procedures. (In addition to existing language)
6.5.a.A.b	70.7(e)(2)(i)(B)	Comment for section 5.1.a.C is applicable.
6.5.a.E	70.7(e)(2)(v)	Language "..6.5.a.D(a) through (d)" should be changed to "6.5.a.D(a) through (c)".
6.6.a.C	70.7(f)(1)(iii)	Language should be changed: "The chief or US EPA determines..."
6.6.a.D		See comment 6.6.a.C
8	70.9	The term "actual emissions" should be defined.
9.1	70.4(b)(11)	This section does not satisfy requirements for the transition plan in 70.4(b)(11)

July 5, 1993

RECEIVED

93 JUN 37 AM 11:31

WEST VIRGINIA
AIR POLLUTION
CONTROL COMMISSION

Britt A. Bernheim, Secretary
Air Pollution Control Comm
1615 Washington St. East
Charleston, WV 25311

Requirements for Operating Permits
Rule Proposed: 45 CSR 30

The following comments are requested to be considered:

Page 1: Para 1.1.: The transition period must have a date set. or a time identified.

Page 1, Para 2,3: This must cover Incinerators. and on Page 7, Item "H", Change the charging rate to five tons per day, instead of fifty.

Page 2, Para "1", Delete the words: "or otherwise".

Page 3, Para 2.16. We must insist on W.VA. being able to have more stringent conditions than the Federal standards due to our air inversions in our valleys.

Page 4, para 2.23: Add at end of para: "which shall be no less stringent than that required by E.P.A. standards.."
Para 2.23 a: Revise last sentence to read:"MACT shall not be less stringent than the most stringent emissions that can be achieved by existing technology."

Page 4, Para 2,23A: Delete the end statement that reads as follows: " , excluding those sources that have achieved a level of emission rate or emission reduction which complies, or would,... and the rest of this para at the top of page 5."

Page 6, para "A": Delete the last of this paragraph, starting with the word "Notwithstanding".These need regulation also.

Page 9, Para 2.29: Delete the words :"if the limitation is enforcable" in the middle of the paragraph.

Page 10, Para2.32: Change the word"except" to"including".

Page 11, Para 2.35 a: Delete the last portion of this Paragraph, starting with the words:"and either (i) ....."

Page 13, para 3.2.a: Delete the words:"or solid waste incineration units".
para 3.2 B.: Delete this complete para as these units must "NOT" be exempt.

Page 18. para 4.3 g: Emission trading scenarios is not to be allowed by the chief or the State. The sole reason being the cost of monitoring and keeping records and the ease of evading the regulations and also the Industry would become so confused and a paperwork nightmare would exist,

Page 19, para 4.3. b: Change the words, "in a timely manner", in two places, to require meeting the schedules as established.

Page 23, para 5.1, d,at bottom of page.: Delete this complete para as it is confusing and can be used to negate part of the requirements.

Page 24, para 5.1.A and B.: Please delete these as they weaken the rules so that they are nearly meaningless.

Page 25.: Delete all references to "trading allowances as they are not to be allowed in this rule!!!..

Page 26., Items B and C at top of page: Delete both of these para's as the weaken the rule.

Page 26, para 5.2. a:Delete the words"and citizens" or describe the methods citizens can use to enforce these rules!..

Page 32, last paragraph.: Delete as trading is not allowed or condoned or acceptable!!!.

Page 33, first para.: Delete. Trading not allowed.
para d: Delete in its entirety as trading and permit shields are not an acceptable part of this rule.!!!.

Page 34, , para A : Delete the last part of this para starting with the word "except".

Page 36, para 6.4.D: Revise this para to require a public participation in any permit that ownership changes hands. This will allow citizens some control over their neighbors.

Page 37,paraA;: Delete the word"without" and require the chief to provide notice to the public and affected states.

Page 37, parac; Delete the allowance for "permit shield".

Page 38, para b,; Delete the allowance for "emissions trading". This is not to be allowed!!!.

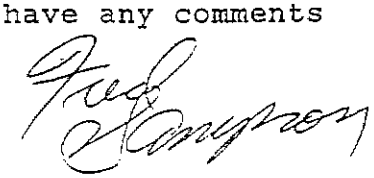
Page 42, , Para 6.8, B, (a), second sentence, Correct to read:"Upon request of the public, the public comment period....."

Page 52, para 8.8, f, middle of page.:" Attainment status" is not defined or described and is confusing . Delate or explain!!!.

Page 53, Para 11.1,a: The enforcable caps must be set by the Chief, in accordance with the requirements of this rule, not by the applicant!!

Thanks for the opportunity to comment. Should you have any comments and or questions , Please advise,

Fred Sampson
Sr 3, Box 25
Ivydale, WV 25113
286-2204



COMMENTS REGARDING THE

OPERATING PERMIT RULE

PROPOSED BY THE
AIR POLLUTION CONTROL COMMISSION
45 CSR 30

Prepared On Behalf Of
West Virginia Manufacturers Association
Appalachian Power Company
Ohio Power Company

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

TABLE OF CONTENTS

I. INTRODUCTION

The West Virginia Manufacturers Association (WVMA) represents a broad cross-section of large and small industrial concerns throughout West Virginia. In keeping with the WVMA's efforts to monitor West Virginia's air pollution control program, the WVMA offers these comments as a means to facilitate the development of a reasonable state permit program.

Appalachian Power Company and Ohio Power Company, both subsidiaries of American Electric Power Corp., are electric generating utilities with power generating facilities in West Virginia which will be significantly affected by the operating permits issued by the Office of Air Quality (OAQ). Both Appalachian Power Company and Ohio Power Company join in these comments and will be developing additional comments which they will file separately.

Throughout these comments on 45 C.S.R. 30 (Reg. 30), the West Virginia Manufacturers Association, Ohio Power Company and Appalachian Power Company are referred to as "the Commentors" or as "we".

II. GENERAL COMMENTS

A. The Commentors Commend the Office of Air Quality For Its Work on the Rule.

The Commentors commend the OAQ for its decision to closely follow the language of 40 CFR Part 70 in drafting this rule. Following the federal rule allows easier comparison between the state and federal programs, and could lead to faster EPA approval of the State program.

Establishing a permit program of this type is very difficult enterprise, as it requires anticipating problems, such as unexpected interpretations by EPA, that are almost impossible to predict. Because of this inherent uncertainty associated with a new program, and despite the APCC's best efforts, we fully expect there will be changes to this rule, or changes in interpretation of the rule, that cannot now be foreseen. Given this uncertainty, the Commentors can only offer these comments based on our best understanding of Reg. 30 at this time. We look forward to working with the OAQ over the next several years as the air permit program evolves.

B. Insignificant Emissions Units.

Reg. 30 does not contain a list of insignificant emissions units or limits that are not subject to the permitting process. Such an exemption list is allowed by 40 C.F.R. 70.5(c):

> The Administrator may approve as part of a state program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application.

In its preamble discussion of this provision, EPA explained why insignificant emissions units are allowed.

> These types of exemptions minimize unnecessary paperwork and reduce the need for sources to conduct analysis of all emissions regardless of the amount involved. Such a position is also supported by the Alabama Power decision, where the court found that emissions from certain small modifications and emissions of certain pollutants at new sources could be exempted from some or all PSD review requirements on the grounds that such emissions would be de minimis. In other words, the Administrator

> may determine levels below which there is no practical value in conducting an extensive review.

57 Fed. Reg. 32273 (July 21, 1992).

Creating a list of insignificant emissions units and activities is extremely important in order to avoid unnecessary work during the permitting process. Without a change in the rule, a power plant which produces tons of oxides of nitrogen (NOx) from its steam generating boilers will have to meet the same recordkeeping and monitoring requirements for an office space heater, which produces a few pounds of NOx per year, as it does for its boilers. Or a chemical manufacturer who produces paint products, and is subject to emissions limits due to tons of VOC emissions from that manufacturing process, could be forced to keep records of VOC "emissions" from every can of paint the plant uses in its maintenance program. Neither of these insignificant emissions units should be addressed in Title V operating permits.

Eliminating insignificant units from the permit allows the OAQ to concentrate on those emissions units from which reduction can be expected. It would not be unusual to find processes where there are one or two major points emitting 99% of the air pollutants, and hundreds of valves, pumps and other extremely minor units emitting less than 1% of the air pollutants. In this situation, imposing the same control measures and recordkeeping requirements on each of the minor sources would be cost ineffective, as every valve, space heater, pump and other de minimis unit would be subject to micromanagement in the permit.

To address the situation, the Commentors suggest the following definition of "significant emissions unit" and the associated list of de minimis units and activities, which could be included in §3.2.d.

d. The requirements of this rule do not apply to insignificant emissions units unless the source requests coverage for insignificant units in its application. "Insignificant emissions unit" means any emissions unit which meets any of the following criteria:

- An emissions unit which releases only volatile organic compounds (which are not also hazardous air pollutants) whose vapor pressure is less than 20 mm of mercury at the temperature at which they are emitted or, regardless of vapor pressure, which emit less than 1 ton of VOCs per year.
- Emissions units with uncontrolled emissions of 10 tons per year or less of carbon monoxide.
- Emissions units with uncontrolled emissions of 12 pounds per year or less of lead.
- Emissions units with uncontrolled emissions of 100 pounds per year or less of any Class I or II substance subject to a standard promulgated under or established pursuant to title VI of the Federal Clean Air Act concerning stratospheric ozone protection.
- Emissions units with uncontrolled emissions of 1 ton per year or less of nitrogen dioxide, sulfur dioxide, particulate matter (PM_{10}) or volatile organic compounds.
- Any emissions unit that is determined to be enforceably shut down.
- Changes in the surface area of open-top wastewater handling, storage and treatment facilities.
- Additions or changes to aeration equipment in wastewater treatment facilities.

- Changes in the composition of wastewater which do not require a major modification of a NPDES permit.

- Gasoline and diesel powered engines which are less than or equal to 150 H.P. per engine.

- Gas flares or flares used solely to indicate danger to the public.

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

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

- Indoor or outdoor kerosene heaters.

- Space heaters operating by direct heat transfer.

- Repairs or maintenance where no structural repairs are made and where no new or permanent facilities are installed.

- Safety devices and emergency units, if associated with a permitted emissions source.

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

- Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

- 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 is not greater than those experienced by consumers, and which may include, but not be limited to, personal use items; janitorial cleaning supplies, office supplies, paint and supplies to maintain copying equipment.

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

- Firefighting equipment and the equipment used to train firefighters.

- Laboratory equipment and associated hoods used exclusively for chemical and physical analyses, including such analyses for quality control measurements.

- Sampling connections used exclusively to withdraw materials for lab testing and analysis.

- Batch mixers with rated capacity of 5 cubic feet or less.

- Brazing, soldering or welding equipment.

- Blast cleaning equipment using a suspension of abrasives in water.

- Extrusion presses used exclusively for metals, minerals, plastics, rubber or wood, except where halogenated organic compounds are used as foaming agents.

- Equipment used exclusively for forging, pressing, drawing, spinning or extruding hot or cold metals.

- Equipment used for compression molding and injection molding of plastics.

We recognize that the APCC may have some questions about these insignificant units (many of which were borrowed or adapted from Virginia's proposed operating permit rule). There may be ramifications associated with designation of insignificant units that we have not fully considered, and we look forward to an opportunity to address these concerns with the APCC as they arise.

C. Flexible Operations Require Timely Permit Actions.

The Commentors wish to impress upon the APCC the importance of flexible operations and timely permit issuance to the regulated community. We hope that the provisions for flexible operations, alternative operating scenarios, off-permit changes, and minor permit modifications will allow companies to continue to develop

new products in a competitive fashion. Changes are constantly occurring that are impossible to predict in advance and, therefore, some permits will require frequent modifications. For example, 25% of 3M's sales each year come from products that were not on the market five years ago.

Industry must be able to adjust swiftly in order to take advantage of manufacturing and business opportunities and capitalize on changes in the marketplace. Many plants in this state have a sister facility in other states which produce the same or similar products. In that situation, the plant which can bring production on line the fastest will get the investment (and jobs) necessary to make the products. Similarly, plants located in West Virginia that can make quick operating switches will be able to move a product to the market faster than competitors from other states, thereby benefiting the businesses and workers in this state.

It is not the cost of air pollution controls that most concerns the Commentors. While important, those controls and emission limits are fairly standard, and apply to sources independently of Reg. 30. Rather, the Commentors are concerned about potential roadblocks to implementing those controls in Reg. 30. Regardless of what limits and conditions are imposed, industry needs to be able to quickly and accurately determine what standards apply and get them incorporated into the permit. Therefore, throughout these comments the Commentors will identify numerous situations where Reg. 30 can be changed to allow for more flexible and timely action without any sacrifice in the level of protection for ambient air quality.

D. Imposition of Emissions Limits, Terms and Conditions.

Both the federal and state rules include broad requirements for identifying and imposing all applicable requirements, but leave unstated the precise manner of complying with this directive. These applicable requirements, primarily emission limitations established by the SIP, could be applied emissions unit by emission unit, or by broad limits that apply to an entire production process or the whole source. Where possible, the APCC should impose applicable requirements in the latter fashion, upon groups of units. The APCC should avoid the unvarying imposition of controls and emissions limits on individual emissions units.

A major source may contain several process units, each producing a different product, and each process unit may contain thousands of valves, pumps, vents and other small emissions units which are not insignificant units. These production units are dynamic facilities that undergo frequent changes as the unit is modified or materials rerouted in the manufacturing process. If every change of a valve or vent or ingredient requires a permit modification, or must be identified as a separate operating scenario, the state will be overburdened with permit modifications and manufacturing operations will grind to a halt. This is especially important in light of the fact that sources will be required to predict the specifics of their operations approximately seven years in advance, given the time needed to develop and process a permit application, plus the five-year term of the permit itself.

One of the most important aspects of flexible operations is emissions trading. Emissions trading for purposes of Title V purposes may depend on having

some sort of trading provision in the SIP. In order to make sure that the state has a trading program in place, we urge the APCC to incorporate by reference in Reg. 30 the Emission Offset Interpretative Ruling found at Appendix S of 40 C.F.R. Part 51, at least until the APCC adopts an emissions banking rule.

To address these potential problems the Commentors have suggested changes throughout Reg. 30 that will allow permits to include flexible limits and conditions without sacrificing ambient air quality. In large part this can be done by emissions trading and imposing applicable requirements on groups of emissions units that comprise a process unit. Of course, some applicable requirements must necessarily be imposed on a unit-by-unit basis, but this should be avoided where possible, especially a point-by-point approach that would result in limits so small they cannot be measured and must be calculated.

III. SPECIFIC COMMENTS

A. Section 2.5 - Definition of Applicable Requirements.

Paragraphs 2.5.l and 2.5.m are not found in the definition of "applicable requirements" in 40 CFR §70.2. Paragraph m requires imposing as a permit condition any relevant provisions of 45 CSR 4 (governing objectionable odors) and 45 CSR 27 (toxic air pollutants). Neither of these rules is part of the State Implementation Plan (SIP) and as such is not enforceable by the EPA. Standards imposed pursuant to such rules should not be made applicable requirements and hence part of a federally enforceable operating permit. Similarly, some of the emissions caps and related requirements referred to in § 2.5.l which might be entered

into with the Chief might be for non-SIP provisions. Consequently, we suggest that paragraph m be deleted and paragraph l be reworded as follows:

> l. any enforceable emissions cap and related requirements established for the source by agreement with the Chief and EPA.

B. Sections 2.23 and 13 - Definition and Application of "Maximum Achievable Control Technology".

There is no definition of Maximum Achievable Control Technology (MACT) in 40 CFR 70.2. The Commentors question whether such an extensive definition of MACT is appropriate for the definition section, in light of the fact that Section 13 establishes the criteria for applying MACT and contains the statutory reference to the list of source categories mentioned in the definition. Consequently, we suggest that the definition of MACT be limited to the first paragraph in §2.23, and the rest of the definition be deleted or moved to §13. In addition, please note that the Commentors are proposing changes to §13 which will, in essence, allow the Chief to comply with 42 USC 7412(g) and (j) and will effectively incorporate those portions of §7412(d) which define MACT. With this change there is no need to restate the MACT definition in the State rule if it is effectively incorporated by reference to the federal statute.

Regardless of whether portions of the definition of MACT are deleted or moved to §13, the Commentors would urge certain changes to the language found at §2.23. Section 2.23.b.A is particularly difficult to understand (although we recognize

that it is taken from the Clean Air Act), and the Commentors suggest that it be restated as follows:

> b. MACT requirements for existing listed sources 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. For categories or subcategories with thirty 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 42 USC 7501) applicable to the source category and prevailing at the time.

The Commentors also take issue with paragraph c, which states in part that "MACT shall represent the maximum degree of emission reduction **that the Chief determines is achievable. . .**" Such a standard introduces an element of subjectivity into the MACT determination process. Instead, the Commentors urge that §2.23.c paraphrase the Clean Air Act statutory requirement and provide that

> MACT shall represent the maximum degree of emission reduction achievable, taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impacts and energy requirements.

We suggest that §13.1 be rewritten, and §§13.2 & 13.3 be deleted and replaced, all as follows

> 13.1 After the effective date of the operating permit program, the Chief shall determine and apply case-by-case MACT standards as provided in 42 USC 7412(j) to each relevant unit of a major

source in a category of sources listed in the "Initial List of Category of Sources Under 112(c)(1) of The Clean Air Act Amendments of 1990" 57 Fed. Reg. 31576 (July 16, 1992) no sooner than eighteen (18) months after EPA fails to timely promulgate a standard for that category in accordance with 42 USC 7412(e), and to each modified or constructed major source of hazardous air pollutants in accordance with 42 USC 7412(g).

13.2 A source which is major for hazardous air pollutants as defined in 42 USC 7412 shall submit a permit application or permit modification application:

a. as required by 42 USC 7412(j) no later than eighteen (18) months after EPA has failed to promulgate a standard for that source's category, as provided in 42 USC 7412(e). Such application shall only request a permit, or modification of a permit, for the emissions units included in the source category for which the standard should have been promulgated; or

b. upon modification of a major source of hazardous air pollutants, to the extent required by 42 USC 7412(g).

13.3 In determining case-by-case MACT standards the Chief shall grant reasonable compliance schedules for existing sources, as provided in 42 USC 7412(e)(3), and shall not require an application for MACT under this section where a source has met the early reduction requirements of 42 USC 7412 (i)(5).

This proposal would give the Chief the authority to impose case-by-case MACT standards, and would clarify when a permit modification or a permit application is required from a major source of hazardous air pollutants. It would also allow reasonable compliance schedules to meet the case-by-case MACT limits, as would be allowed if EPA was setting the limit, and would require the Chief to honor EPA's agreement to modify MACT requirements for those sources which made significant reductions before a MACT rule was established. Finally, it would recognize that the case-by-case MACT standards apply to any unit which falls into

a source category for which standards are to be developed and that MACT standards are not developed for the entire major source if only some of the units at the source fall into a source category.

C. Section 2.24 - Definition of "Major Source".

The Commentors commend the APCC for adopting an exemption from the definition of "major source" for research and development facilities. Such an exemption allows greater flexibility of operation without sacrificing ambient air protection. Some or all of Ohio's definition of "research and development sources" could be used in Reg. 30:

> "Research and development sources" 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, except in a de minimis manner; the temporary use of normal production processes, provided that the use does not include the production of an intermediate or final product for sale or exchange for commercial profit; 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, during those periods of research and development, the heat generated is not used for normal production purposes or for producing a product for sale or exchange for commercial profit; and such other similar sources as the Director may prescribe by rule.

D. Section 2.31 and 2.32 Hazardous Air Pollutants as Regulated Air Pollutants.

The federal rule does not contemplate charging a fee for hazardous air pollutants until a MACT standard has been adopted or 18 months after a §112(e) deadline has been missed, or the pollutant is otherwise regulated. 57 Fed. Reg. 32291. The Commentors believe that, in a similar vein, fees should not be required for any toxic air pollutant which is regulated solely because it is included in Reg. 27. Rather, such emissions should become regulated for fee purposes only when standards are imposed through the SIP, EPA rule, or as case-by-case limits under §112(j) or (g) of the Clean Air Act. We request confirmation of this interpretation.

E. Section 2.36 - Definition of "Section 502(b)(10)[CAA] Changes".

The Commentors are not certain what constitutes a §502(b)(10) change, and suggest that the APCC provide examples of such changes and how this term is to be interpreted, perhaps in an interpretative rule. We request clarification that changes which do not involve a permit term are not considered §502(b)(10) changes and are addressed as off-permit changes. For example, changes in raw material usage should not require notification as 502(b)(10) changes unless the raw materials usage is otherwise regulated.

F. Sections 3.1.b and 11 - Conditioned Minor Sources.

The Commentors commend the APCC for its willingness to acknowledge that there should be alternatives to a Title V permit where the alternatives provide protection to the state's environment. However, the conditioned minor source provisions of §11 do not accomplish this end. The conditioned minor source

procedures are no less cumbersome than other requirements, except for unspecified changes the Chief may develop. In essence, §11 requires a source to go through procedures substantially similar to those required under Title V in order to get a federally enforceable state permit, with no permit shield after the process is completed. This is truly the worst of both worlds.

In lieu of conditioned minor sources, the APCC should allow the Chief to enter into an agreement with any source to limit emissions, and provide that any such agreement is federally enforceable. Since the emissions limitations would be federally enforceable, the source's "potential to emit" would be reduced to the agreed-upon level and, if that level was low enough, the source would not qualify as a "major source".

The purpose of this type of agreement is to recognize that, for many facilities, the level of current emissions, and the levels they are willing to bind themselves to achieve, are much less than a theoretical potential to emit which supposes unrealistic operating practices. For example, a source may operate machinery eight hours per day which, if operated for 24 hours per day, would emit 100 tons of a criteria pollutant. If the source is willing to bind itself to operating 8 hours per day, the source will be prevented from emitting 100 tons of air emissions and, if the restriction is federally enforceable, will no longer have the "potential to emit" levels of pollutants sufficient to qualify as a major source.

Sources should be rewarded for their willingness to guarantee emissions reductions independent of, and perhaps greater than, those that would be required

under Title V permits. As currently drafted, sources which have the potential to emit regulated pollutants in excess of major source levels will have little incentive, other than reduced permit fees, for limiting emissions. A source may very well make the decision that it is worthwhile to pay additional fees in order to have a permit which preserves its potential to emit so that it can later increase hours of operation, or resume a rate of production which it had formerly obtained and which is still consistent with the state SIP. However, if it can drop out of the major source permit program altogether, that same source may be willing to accept significant limitations on its potential to emit. This sort of situation, where the source gives up its ability to increase emissions without approval from the Chief, and in return avoids the cumbersome permit program, works to the advantage of air quality in West Virginia.

The Commentors suggest the deletion of §§11, 3.1.a.E. and 3.1.b, and the insertion of the following language at §3.1.b.:

> The owner or operator of any source may enter into an agreed order with the Chief which imposes physical or operational controls on that source so that it is no longer required to apply for a permit under this rule. Such agreed order shall be enforceable by the Chief and by EPA.

Other resolutions might work as well, such as allowing facilities to obtain federally enforceable permits under Reg. 13 to limit potential to emit. However, this would require amendment to Reg. 13 to allow sources to acquire Reg. 13 permits even if they were not modifying their facilities.

G. Section 3.2 Permit Exemptions.

Section 3.2.a allows an exemption for sources that are not major sources, affected sources, or solid waste incineration units from an obligation to obtain a permit for a period of 5 years from the effective date of the State operating permit program. The federal rule does not put a five year limit on this exemption, and there is no reason for the State to do so. If the Commission determines that additional sources require permits to meet air quality standards, those source categories can be described in §3.1. Until then, there should be no sunset of this exemption for minor and other sources.

H. Section 3.2.d. Insignificant Units.

A new paragraph, §3.2.d., would be an appropriate place to list insignificant emissions units, as proposed in General Comment Section II.B.

I. Section 3.3.a - Applicable Requirements.

Many sources will have applicable requirements for emissions of regulated pollutants that come from both large and small emissions units. In many cases monitoring and compliance certification would only be necessary for larger emissions units and not for the insignificant emissions units. An example of such a situation is a large utility boiler which produces large amounts of NOx and would be subject to any number of applicable requirements, such as monitoring and controls, and a small space heater which produces minuscule amounts of NOx. In that event there is no need to impose the same requirements on the heater that are imposed on the boiler stack. This problem can be resolved by insertion of the word "relevant"

before the words "emission units" in § 3.3.a. Not only does the word "relevant" introduce an element of reasonableness into the rule, it is found in the federal definition and should be incorporated in the State rule.

Paragraph 3.3.a. should also acknowledge that, in many situations, there may be multiple emissions units in a production process, and applicable requirements should be imposed on the group rather than individually. For example, a facility with multiple boilers might be subject to a single emissions limit, or a single limit may be appropriate for all the boilers which are part of the same production system. Imposing the requirement on the group provides the same protection of air quality while allowing flexibility in shifting emissions among the individual units.

To make these changes we suggest that §3.3.a be changed as follows:

> a. For major sources, the Chief shall include in the permit all applicable requirements for all relevant emissions units in the major source subject to this rule. For purposes of this section, "relevant emissions unit" shall mean only those emissions units that are subject to applicable requirements. Applicable requirements may be imposed upon a group of emissions units or the entire source while providing for appropriate aggregate emissions limits or caps.

J. Section 3.5 - Termination of Permits.

Situations will arise in which a major source, perhaps because it has closed part of its operations or adopted new control technology, will no longer be a major source or will not otherwise need a Title V operating permit. The rule should recognize that, in such case, a permit is no longer required. The Commentors suggest a new subsection be adopted addressing this situation:

3.5 Any source which has a Title V operating permit may surrender its permit and be exempted from the requirement of having a Title V operating permit upon assuming enforceable controls and limitations so that it is no longer required to obtain a Title V operating permit.

K. Section 3.6 - Issuance of Multiple Permits.

Situations may arise in which it would be advantageous to have two or more permits for a source. The APCC has already recognized that this may be appropriate with regard to research and development facilities which are located near or at a source which is otherwise a major source. Facilities might also wish to apply for a general permit for some parts of its operations and cover the rest of its operations in another permit. If, for example, a general permit is developed for boilers of a certain type, a facility may wish to have such boilers covered under a general permit and have an individual permit to address other emissions units at the source. This would not affect the aggregation of emissions for purposes of determining whether a source is a major source, or for purposes of fee calculations, but would introduce some flexibility into the permitting process. Furthermore, some allowance should be made for facilities which qualify for permitting under a general permit which was adopted after the source received its Title V operating permit.

The Commentors suggest the following language be added as §§3.6 & 3.7:

3.6 A source which is subject to the permitting requirement of this section may comply with such permitting requirements through any of the following methods:

a. The source may obtain a single permit for all relevant emissions units located within a contiguous area under common control (whether or not falling under the same two-digit SIC code);

b. The source may obtain separate permits for separate emissions units or groups of emission units; or

c. The source may request and obtain coverage for one or more emissions units eligible for coverage under a general permit issued by the Chief and obtain a separate permit or permits for emissions units not eligible for such coverage.

3.7 Any source may surrender or amend its Title V operating permit upon receiving a general permit issued pursuant to subsection 5.4 of this rule which the Chief determines addresses all applicable requirements at the source.

L. Section 4 - Application for Permits.

The permit application deadlines found in §4.1 are clearly intended to apply to existing sources, as the dates for applications for permits are all tied to the effective date of the operating permit program. Unless the language is changed, there could be confusion for new sources which are constructed more than a year after the operating permit program is approved. To address this situation, §§4.1.a.A and B should be changed as follows:

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

. . .

B. Applications for Title V operating permits for sources required to meet requirements under 42 USC 7412(g) of the Clean Air Act, or to have a permit under the pre-construction review program approved in the state implementation plan under Part C or D of Subchapter I of the Clean Air Act, may be submitted within twelve (12) months of commencing operations or the source may apply for a single permit under this title which will include all applicable requirements of this rule as well as all applicable requirements of the appropriate pre-construction review program. Where a term or condition of an existing Title V operating permit would prohibit construction or changes in operation of a source,

> the source must obtain a permit revision before commencing operation. Such permit modification may take the place of any pre-construction review permit or approval if the modification of the Title V permit imposes substantially similar requirements to those imposed by the pre-construction review program.

The change to §4.1.a.B would further define the application process by allowing a source to initially apply for only a preconstruction permit and later apply for an operating permit within one year of beginning operations at the source or applying for a Title V operating permit at the same time a preconstruction permit is applied for, so that only one document which addresses all requirements is necessary. If a source already has a Title V permit, and the proposed construction or modification would require a revision to the permit, the source could elect to get a separate preconstruction permit and a Title V permit revision, or get only a Title V permit revision which addresses all the requirements of the operating permit and preconstruction review programs.

M. Section 4.1 - Duty to Apply For a Permit.

Only those sources identified in §3 of the rule are required to apply for permits. Section 3.2 identifies exemptions, the most important of which is the exemption for minor sources. In order to clarify that minor sources are not required to file a permit application, the Commentors suggest that §4.1 be amended as follows:

> 4.1 Duty to apply. For each source required to obtain a state operating permit pursuant to section 3 of this rule, the owner or operator shall submit a timely and complete permit application in accordance with this section.

N. Section 4.1.a.E - MACT Modifications.

This section requires submission of a permit application twenty-four months after EPA's failure to meet a MACT deadline. This is a longer period than is allowed under §112 of the Clean Air Act; case-by-case MACT standard applications are due 18 months after EPA misses its 42 USC 7412(e) deadline. 42 USC 7412(j). If the intent of subparagraph E is to require a case-by-case application 12 months after a 42 USC 7412(e) deadline is missed, the rule will require the application sooner than EPA mandated under 42 USC 7412(j). As §7412(j)(3) makes clear, the Clean Air Act compels submission of an application by the target date, but does not require issuance of the permit or permit modification by that date.

In light of the other changes proposed by the Commentors to clarify the effect of the case-by-case MACT standard, the Commentors suggest subparagraph E be rewritten as follows:

> E. The owner or operator of a major source subject to Section 13.1 of this rule shall file an application for a permit or a permit modification within the time specified in paragraph 13.2.a. of this rule.

This change presupposes that changes were made to the MACT standard as suggested by the Commentors in Section III. B. of these comments, which established a deadline for applying for case-by-case MACT standards.

O. Sections 4.1.b, 6.1.d and 6.2 - Completeness Determination.

Sections 4.1.b and 6.2 set the standards for determining whether a complete application has been filed and its effect on the source's ability to continue to operate while it awaits final permit issuance. It is clear that, if a permit

application is submitted in time to be deemed complete before the deadline for the permit application passes, any subsequent request for information by the Chief will not revoke the completeness determination as long as the applicant provides the requested additional information in a timely fashion. However, the rule is less clear if additional information regarding a timely-filed permit is requested by the Chief after the deadline for a permit application has passed but before the application is deemed complete. In this event, the rule should specify that the permit application shield of §6.2 applies so long as the permit applicant submits the requested information within the time specified by the Chief.

In order to extend the permit application shield, the Commentors suggest that the last sentence of §4.1.b be deleted and replaced with the following:

> The source's ability to operate without a permit, as set forth in §6.2 of this rule, shall be in effect from the date the permit application is submitted until the final permit is issued, provided that the applicant submits any requested additional information by the deadline set by the Chief. If the Chief determines that additional information is needed regarding a permit application which was timely filed, and the deadline for filing an application has passed, the Chief may request such additional information and specify the time for submitting it. If such additional information is received within a timely manner, the permit application will be treated as having been complete on the date that it was first filed with the Chief.

A new subparagraph F should be established under §4.1.a to provide as follows:

> A permit application will be deemed timely if it is submitted by the deadline established under this section, even if additional information is required by the Chief, as long as any permit applicant provides the Chief with any additional information within the time limits specified by the Chief.

Both §§4.1.b. and 6.2 should also be changed to allow 30 days, rather than 60, for a completeness determination. Thirty days should be sufficient time to review an application for simple completeness, especially since the Chief can ask for additional information at any time, even after the application is deemed complete. This change is especially important if the Commission elects not to make the other changes noted above, because each day allowed for the completeness determination moves back the date the permit application is due. For example, if 60 days is allowed for the completeness demonstration, the application must be submitted 90 days before the application deadline, so the applicant will have a minimum of 30 days to make any corrections before the application deadline. For sources whose permits are due 90 days after the effective date of the permit program, the applications are due, as a practical matter, on the day the program goes into effect.

These proposed changes would still leave the completeness determination in the Chief's hands. Applications which are not offered in good faith can still be declared incomplete, with all that designation entails. However, most sources will be operating in good faith, and it will be difficult for those facilities to anticipate all the application information the Chief will require, especially in the beginning of the permitting program. The proposed language acknowledges this difficulty and allows a facility owner or operator who meets the permit application deadline time to obtain a completeness determination (and the permit application shield that goes with it) while still allowing the Chief to request any additional information he needs.

P. Section 4.3 - Standard Application Form.

The reasons for creating a list of insignificant emissions units, and nominations for that list, have been set out in the General Comments section of these comments. If the APCC adopts the concept of an exclusion for insignificant units and activities, changes must be made in other parts of the rule. One of those places is §4.3, which sets out the requirements for an application. The second sentence after the heading should be rewritten as follows:

> Information, as described below, for each emissions unit at a source which is not insignificant as defined in section ____, shall be included in the application, except that a list of insignificant activities which are exempted solely because of size or production rate must be included in the application.

In adopting insignificant emissions units or activities, it would be helpful if the APCC identified which of such units are required to be listed in permit applications.

Another provision that will require change is §4.3.c.A. The second sentence of that subparagraph should read:

> A permit application shall describe all emissions of regulated pollutants emitted from any emissions units, except where such units are insignificant emissions units defined in subsection _____ of this rule or are exempted under subsection 3.1 of this rule.

In addition, the word "significant" should be added before the words "emissions units" in §4.3.c.G.

Q. Section 4.3.d.c. - Permit List.

The APCC has added an additional requirement in §4.3.d.C. which is not found in the federal rule and which requires submission of a list of air quality-related

permits, orders and applications. We suggest that this subparagraph should be clarified by changing the last clause in the following fashion:

> . . .that are effective or pending and have been issued by, or submitted to, the Commission, the Chief or EPA.

R. Sections 4.3.g. and 5.1.a.c - Permit Application Requirement.

The requirement in §5.1.a.c. that a permit applicant propose alternative equivalent emissions limits at the time it files its application belongs in §4.3.g. That paragraph should read:

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

Once this change is made, the last sentence in §5.1.a.C could be eliminated.

S. Section 5.1.a.D - Distinguishing State and Federal Permit Requirements.

While most rules promulgated by the APCC are part of the SIP, there are some rules which are not. For example, 45 C.S.R.4 (odor) and 45 C.S.R. 27 (toxic air pollutants) are not part of the SIP but might be made permit terms or conditions. Some provision should be inserted in the state rule which requires the Chief to differentiate between SIP conditions which are federally enforceable, and those enforceable only by the state. This could be done in §5.1.a.D., in the following fashion:

> D. The Chief shall identify in the permit those terms and conditions which are enforceable by EPA.

T. Section 5.1.a(c) - Continuous Emissions Monitoring.

Continuous emissions monitoring is an extremely expensive and resource intensive method of air monitoring, and it should not be required unless it is the only legitimate means of determining the amount of air emissions or it is specified as an applicable requirement in the SIP. In order to emphasize the need to consider alternatives to continuous emissions monitoring, the Commentors suggest the following language to be put at §5.1.c.A.(c):

> (c) Continuous monitoring shall be imposed only where requested by the permittee or where it is the only option provided under an applicable requirement.

U. Section 5.1.c.C(b) - Definition of Prompt.

The rule is unnecessarily confusing as to what constitutes "prompt" reporting. Under §5.1.C(b) it appears that the Chief can define "prompt" on a case-by-case basis. However, a satisfactory definition of "prompt" is found in subparagraph (c), which follows. Consequently, the Commentors urge deletion of the last sentence in §5.1.C.c.(b) and beginning §5.1.c.C.(c) as follows:

> (c) Reporting is prompt if it is done within the following time limits:

V. Section 5.1.d.C. - Acid Rain Allowances.

Reg. 30 does not contain an equivalent to 40 C.F.R. §70.6(a)(4)(iii), which pertains to the manner in which acid rain allowances are accounted for. Section 5.1.d.C. should be created, to provide that

> c. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of The Clean Air Act.

W. Section 5.1.f.E. - Duty to Provide Information.

Subparagraph E obligates the permittee to provide certain records and other information to the Chief upon request. If a claim of confidentiality is made, however, the permittee is to provide records directly to EPA along with the claim of confidentiality. Does this provision relieve the permittee of the need to provide such information to the Chief? This provision should be clarified.

X. Section 5.1.h - Emissions Trading.

Section 5.1.h allows changes at a permitted source without a permit revision if the changes are made under an approved emissions trading program and are in accordance with all applicable requirements. This provision points to the importance of incorporating an emissions trading program into the SIP, such as the emissions trading regulation proposed by the WVMA. An emissions trading system benefits both the state and stationary sources. The latter benefit by obtaining greater certainty that reductions they make will be recognized by the state and can be used or sold at some later time to offset emissions increases. The state benefits because any emissions that are banked are not being released, and sources will have incentive to reduce emissions for netting or sale as soon as practical rather than continue emissions until a netting event occurs at that source.

The Commentors strongly urge the APCC to adopt an emissions trading program at the earliest possible date so that intersource emissions trading and banking rules can be standardized. However, the Commentors believe that §5.1.h allows instrasource trading and banking if appropriate provisions are written into the

operating permit for this purpose, regardless of adoption of an emissions trading or banking rule. The Commentors urge the Commission to acknowledge this interpretation of the emissions trading provisions in its response to comments and to confirm that the State will allow application of EPA's federal Emission Offset Interpretative Ruling and related guidelines.

Y. Section 5.1.i - Reasonably Anticipated Operating Scenarios.

The Commentors believe that the ability to write permits to include alternative operating scenarios will be a cornerstone of flexible operations. Such flexibility should include not just anticipated changes in hours of production or process configuration, but the use of different chemicals to make slight changes in the production process. If a facility anticipates that it will be making a variety of products which involve slight changes in the VOCs used to produce them, the permits should be written to allow use of a variety of VOCs in the process as long as the source complies with all applicable requirements. For example, an extruder may produce a variety of products from various resins and miscellaneous ingredients. All the processes emit VOCs, but the specific chemicals are different for each end product. Or a process may use alternative members of a chemical family, such as organic alcohols or organic polymers, as raw materials for a number of related products. Each of the raw materials would have slightly different molecular weights and volatilities, and use of each would have a quantifiable effect on the rate of emissions. The permittee should be allowed to describe the various scenarios by describing the family of raw materials and the maximum emissions rates foreseen.

The Commentors urge the adoption of §5.1.i.D. to read as follows:

D. May include categories of VOCs or other substances which can be substituted for one another in a production process.

Z. Section 5.3.b.A - Inspection and Entry.

All of the inspection and entry requirements found in §5.3.b are conditioned upon being performed at reasonable times, except for subparagraph A. The words "at reasonable times" should be added after the word "permit" in §5.3.b.A.

AA. Section 5.4 - General Permits.

Section 5.4 addresses some of the conditions that apply to general permits. This section is taken from 40 C.F.R. § 70.6(d), which contains language which is not found in the state rule. The last sentence of §5.4.a. should be made consistent with the federal rule by adding the following phrase to the end of that sentence:

> . . .unless otherwise provided in regulations promulgated under that subchapter of the Clean Air Act.

The federal rule also contains the following sentence, which should be added to §5.4.c of the State rule, in order to clarify what is a reviewable permit action:

> Without repeating the public participation procedures required under subsection 6.8, the Chief may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

The following sentence should also be added to paragraph d:

> A source may seek judicial review of a final action denying coverage under a general permit or a failure by the Chief to take final action within 90 days of submission of the request for coverage.

The Commentors believe that §5.4.e.A and the last sentence of §5.4.e.B should be deleted. There is no reason why incorporation of a general permit into a source-specific permit should result in reopening the general permit for comments. The general permit conditions will already have undergone public comment, and there is no reason to repeat this process. The effect of subparagraph A and the last sentence of subparagraph B is to greatly limit the use of general permits at a source which also has an individual permit. It also creates duplicative obligations with no benefit gained.

Sources should be able to elect to seek multiple permits or a consolidated permit. The APCC is taking away that right with its limitations on the use of general permits.

BB. Section 5.5 - Temporary Sources.

The State rule contains several provisions not found in the federal rule that greatly limit the usefulness of a temporary source permit. Paragraphs d and e require the locations of the temporary source to be identified in the permit, and public notice provided to all such areas as required by §6.8. This requires advance knowledge that is simply unavailable to anyone with a movable source. It would be unusual that anyone with a portable source would be able to identify every place it may be operating five years or more in advance.

The advantages of temporary sources include their mobility and the ability to meet needs as they arise, but this advantage is greatly reduced if movement

is restricted to only those places that can be identified at the time the permit application is filed. The Commission should eliminate §§5.5.d. and e.

CC. Section 5.6 - Permit Shield.

Section 5.6 establishes the terms of the permit shield, which is available to all persons who receive a Title V operating permit. Paragraph a discusses the permit shield, but the first phrase of that paragraph, "Except as provided in this subsection," is not consistent with the federal rule that it tracks. To be analogous, the word "subsection" should be replaced with the word "rule". Furthermore, 40 C.F.R. §70.6(f)(3) contains two provisions not reflected in Reg. 30, which the state may wish to consider incorporating.

DD. Section 5.7.c.D - Emergency Provisions.

The federal rule allows 2 working days in which to submit notice of emissions limits exceedances due to an emergency, whereas only 1 working day is allowed for this notice in §5.7.c.D. That subparagraph also requires "a request for variance, as applicable rules provide", a phrase which is not found in the federal rule and the meaning of which is unclear. If the Commission is referring to a variance request required by another rule, §5.7.e expressly provides that the emergency provisions of Reg. 30 apply in addition to emergency or upset provisions in other applicable requirements. The Commission should allow 2 working days to report emissions exceedances due to emergencies and delete the requirement for a request for a variance.

EE. Section 5.8 - Operational Flexibility.

States are required, as part of their permit program, to allow certain changes without a permit modification. The federal rule, at 40 C.F.R. § 70.4(d)(3)(viii), provides "the [Title V] program must allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of Title I of the Act, and the changes do not exceed the emissions allowable under the permit. . ." Consequently, the Chief has no option except to allow such changes without the state regulation becoming more stringent than the federal regulation, which is prohibited by law. Accordingly, if §5.8 is not rewritten the first sentence should be changed to read:

> For each permit issued under this rule, the Chief shall authorize a permitted facility to make changes within the facility without a permit revision. . .

Reg. 30 also differs from the federal rule by specifying, in a parenthetical aside, the preconstruction rules which were promulgated in accordance with Title I of the Clean Air Act. The Commentors believe that 45 CSR 13 is broader than required by Title I, and that there are situations in which Reg. 13 requires a permit for modification and Title I would not. Therefore, we urge the APCC to dispense with naming the portions of the state SIP that it believes constitute the preconstruction review portion of the SIP.

Subparagraph B of §5.8.c appears to have a typographical error. The comma after the word "permit" in the second line of that subparagraph should be a period and the word "nothing" should begin the next sentence.

Rather than making these individual changes, the APCC may wish to rewrite §5.8. The federal rule, 40 C.F.R. §70.4(b)(12), is different in several important respects from the State rule, especially with regard to emissions trading. For example, §70.4(b)(12)(iii) mandates emissions trading in certain situations if requested by the applicant, while Reg. 30 does not. Because of these and other changes, the Commentors urge deletion of present rule 5.8 and substitution of the following:

> 5.8. Operational Flexibility. Each permit issued under this part shall provide that a permitted facility is expressly authorized to make a section 502(b)(10) change as provided in the federal Clean Air Act within the facility without a permit amendment or permit modification, if the change is not a modification under any provision of Title I of the Clean Air Act and the change does 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 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 EPA and the Chief at least seven days before the change is to be made, except that this period maybe 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 days notice is provided because of a need to respond more quickly to such unanticipated conditions, the permittee shall provide notice to EPA and the Chief as soon as possible after learning of the need to make the change.
>
> b. A permitted source may rely on the authority of this section to trade increases and decreases in emissions within the facility, where the applicable implementation plan or other applicable requirements provide for such emissions trades without a permit modification. In such a case,

the advance written notice provided by the permittee shall identify the underlying authority authorizing the 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 applicable requirement authorizing the emissions trade.

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 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 anticipated in the permit and the permittee resumes compliance with the terms and conditions of the permit, or

B. If the permittee obtains a significant modification to the permit to codify the change in the permit. Nothing in this subsection shall be construed as requiring such a modification to be obtained.

d. Upon the request of a permit applicant, the Chief shall 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 and enforceable and comply with all applicable requirements and subsection 5.1.j of this rule. The permit shield under section 5.6 shall apply to permit terms and conditions authorizing such increases and decreases in emissions. The written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

FF. Section 5.9 - Off-Permit Changes.

Off-permit changes, by their very nature, will be very minor and of only tangential interest to the Chief. There is no reason a 7-day notice period should apply. To address this and other changes, we urge rewriting §5.9 in this fashion:

> 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 or prohibited in its permit, 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 contemporaneous written notice of the change to the Chief and to EPA, except that no such notice shall be required for changes that qualify as insignificant under subsection ____. 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 a record describing all changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, 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 is not addressed or prohibited by its permit if such change is subject to any requirement under Title IV of the Clean Air Act or is a modification under any provision of Title I of the Clean Air Act.

GG. Section 6.1.b. - Time for Issuance of Permit.

Most of the permit writing pressure will occur in the first three years of the permit program, when the Chief is writing permits from scratch for all major sources in the state. Because of the unavoidable problems that will arise the Chief has been given additional time to process permits for existing sources. However, after the three year phase passes, the Chief will write permit modifications and renewal permits, with an occasional initial permit for a new facility. The renewals will not require preparation from scratch, and the Chief will have the benefit of years of experience in efficient permit processing. As a result, there is no reason that permits and permit renewals could not be issued in twelve months or less, and we suggest that § 6.1.b be rewritten as follows:

> Except as provided under the initial plan provided under Section 9 of this rule, the Chief shall take final action on each complete permit application (including an application for permit renewal) within twelve (12) months of receiving a complete application. The Chief shall take action on each significant permit modification within three (3) months of determining that a permit modification application is complete.

As currently proposed Reg. 30 is unclear as to the time allowed to the Chief for issuing permit modifications - §6.1.b indicates 18 months, while §6.5.b.B indicates 6 months. This change would clarify that action on permit modifications must be final within 3 months of a completeness determination. After the Chief has had 30 days to determine whether an application is complete he would still have time for a complete review and development of a draft permit, public comment, and EPA review. If this change is adopted, §6.5.b.B would have to be changed to reflect this

4-month period for issuing significant permit modifications from the date the application is received.

A further change should be made to §6.1.f to correspond to changes made elsewhere in the permit that allow a source to apply for a Reg. 30 permit or permit modification in lieu of a preconstruction permit, as long as the Reg. 30 process incorporates the procedural requirements of the preconstruction rule. This could be accomplished by adding the following phrase to the end of §6.1.f:

> except that a source may, with approval of the Chief, elect to file only an application for a permit under this section in lieu of a preconstruction permit, if the procedures required by the applicable preconstruction rule are followed before issuance of a Title V operating permit.

HH. Section 6.2 - Requirement to Have A Permit.

Reg. 30 prohibits operation of a source without a permit unless a permit application has been filed or a minor modification is sought. The corresponding federal rule recognizes these exceptions, as well as the §502(b)(10) operational flexibility provisions found in §5.8. The first sentence of §6.2 should be changed in this fashion:

> 6.2 Except as provided in the following sentence, subsections 5.8 and 5.9, and paragraph 6.5.a, no source may operate after the time that is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under this rule.

II. Section 6.3 - Permit Renewal and Expiration.

The Commentors suggest that a new paragraph be added to §6.3, to read as follows:

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.

This modification would confirm that the permit shield continues in place until the renewal application is acted on.

JJ. Section 6.4 - Administrative Permit Amendments.

Section 6.4 does not include 2 portions of the federal rule that apply to administrative permit amendments, found at 40 C.F.R. §§70.6(a)(1)(iv) and (2). Closing this gap requires creation of two new provisions, §§6.4.a.F and 6.4.d:

F. Incorporates any other type of change which the Chief has determined to be similar to those in subparagraphs A through E of this paragraph.

d. Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Clean Air Act.

A further change should be made to §6.4.b.A. to allow 30 days, rather than 60 days, for final action on a request for an administrative permit amendment.

KK. Section 6.5.a - Minor Permit Modifications.

Most of the criteria from minor permit modification procedures found in §6.5.a are restatements of the federal rule, except for §6.5.a.A(a)(E), which addresses preconstruction review. The federal rule prohibits minor modifications from including any modifications of a provision required by Title I of the Clean Air Act, which involves preconstruction review. The Commentors are not convinced that all changes

under 45 CSR 13 qualify as Title I modifications, and suggest that there may be some situations in which a modification under 45 CSR 13 would not be a Title I modification, and therefore could be handled as a minor modification under the state rule. Therefore, §6.5.a.E should be changed to read:

> E. Do not involve preconstruction review or modification under Title I of the Clean Air Act.

LL. Section 6.5 - Permit Modification.

Permit revisions or modifications should only extend to the conditions being changed or modified, and should not be a vehicle for reopening the permit. The rule should explain that reopening the permit for modification of one provision should not be a basis for reopening unrelated provisions.

In addition, the federal rule at 40 C.F.R. §70.6(e) states that permit modifications for acid rain provisions are dealt with under separate regulations. A conforming change should be made to the state rule. The Commentors urge the adoption of the following language in §6.5:

> When a permit is modified, only the conditions subject to modification can be reopened, and all other conditions of the permit remain in effect. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Clean Air Act.

MM. Section 6.5.a. - Minor Modification Criteria.

The minor modification provisions are missing language that is contained in the federal rule. The words "for temporary sources" should be inserted between the words "determination" and "of" to make that provision correspond to 40

C.F.R. §70.6(e)(2)(i)(A)(3). In addition, the following should be added to the end of § 6.5.a.A(a)(D):

> and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Act and an alternative emissions limit approved pursuant to regulations promulgated under 42 U.S.C. 7412(i)(5).

In addition, §6.5.a.A.(a)(E) prohibits minor modifications that would involve preconstruction review under 45 C.S.R. 13, 14, 15 or 19. The federal rule prohibits minor modification where there has been a change which is a modification under Title I of the Clean Air Act. The Commentors believe that some Reg. 13 changes are not modifications under Title I of the Act, and therefore urge that the state rule be changed to reflect the federal language.

NN. Section 6.5.a.E. - Changes to Minor Modifications.

The state rule would not allow any minor permit modification to be implemented unless the permit application was filed at least seven days prior to the proposed change. Section 70.7(e)(2)(v) of the federal rule provides that "the state program may allow the source to make the change proposed in its minor permit modification application immediately after it files such application." The source makes minor permit modifications at its own risk - the permit shield does not apply to minor permit modifications, and failure to comply with the proposed permit terms and conditions may result in the existing permit terms and conditions (which the source is seeking to modify) being enforced against it. With these potential sanctions

applying, a permit applicant will be extremely careful before making a minor permit modification. Consequently, there is no reason for the seven-day waiting period found in the state rule. The first sentence of §6.5.a.E should be changed to provide that:

> A permit applicant may make the change proposed in a minor permit modification application immediately after filing the application.

The last sentence of that subparagraph should be changed as well, as it provides that failure to comply with the newly modified terms and conditions will result in enforcement of both the newly modified permit provisions and the former, premodification permit provisions. Not only is it illogical to enforce two inconsistent standards, it is contrary to due process. The federal rule only allows enforcement of the premodification conditions, and so should Reg. 30. The last sentence of §6.5.a.E should be modified in the following fashion:

> However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

OO. Section 6.5.b. - Significant Modification Procedures.

The federal rule mandates adoption of criteria for significant permit modifications. 40 C.F.R. §70.7(e)(4)(i). In response, the APCC has defined significant modifications as those requiring "decisions to be made on significant or complex issues or issues that generate or are likely to generate significant material adverse comment from the public, affected states, or EPA." The Commentors believe this language is too broad, because it allows public interest, rather than potential impact

upon the environment, to determine significance. This problem can be addressed by rewriting this paragraph as follows:

b. Significant Modification Procedures

A. Criteria. Significant modification procedures shall be used for applications requesting permit modifications that:

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

(b) 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 impacts, or a visibility or increment analysis;

(c) Seek to establish or change a permit or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(d) Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments.

B. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

C. Procedures for processing. Significant permit modifications shall meet all requirements of these regulations that are applicable to permit issuance and renewal including those for applications, public participation, review by affected states and review by EPA. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs. However, the applicant shall be required to include only information in response to each item on the application form that is necessary for processing the proposed modifications.

These changes also pick up the language from the federal rule which reserves to the source the ability to make changes which render applicable requirements irrelevant.

PP. Section 6.6.d - Notice of Permit Reopening.

Permittees should be given some notice of when the Title V operating permit will be reopened for cause. Thirty days' notice would be appropriate so that the source could respond to the Chief's determination. This could be done by adding a new provision at §6.6.c.A. and §6.6.d and e.

> A. Such notice shall include a statement of the terms and conditions that the Chief proposes to change, delete or add to the permit. If the Chief does not have sufficient information to determine the terms and conditions that must be changed, deleted or added to the permit, the notice shall request the source to provide information within a period of time specified in the notice, or which shall not be less than thirty days except in the case of an emergency. The Chief may waive some or all of the public comment procedures of this rule if the Chief finds that the reopening involves no issues that were not addressed during the initial comment period. The source shall in all cases be afforded an opportunity to comment on the revised permit terms.
>
> d. Upon issuance of the revised permit, both the determination to reopen the permit and the revised permit terms shall be subject to administrative and judicial review.
>
> e. While a reopening proceeding is pending, the source shall be entitled to the continued protection of any permit shield provided in the permit pending issuance of a revised permit unless the Chief specifically suspends the shield on the basis of a finding that such suspension is necessary to implement applicable requirements. If such a finding applies only to certain applicable requirements or to certain permit terms, the

suspension shall extend only to those requirements or terms.

QQ. Section 6.8 - Public Participation.

Public participation is an important aspect of the permit-issuing process, but it should not interfere with the prompt issuance of permits. The Chief should be required to make a good faith effort to give notice to all interested parties, but the fact that someone was not notified should not be the basis for repeating the public comment period or reissuing a draft permit. The Commentors are concerned that someone on one of the lists in §6.8.a.C who does not receive notice will contend that the Chief did not comply with the public notice provisions of the rule, and therefore the issuance of a permit is invalid unless public comment is repeated.

The Chief should continue to identify persons interested in commenting on permits, but should clarify that only the notice to the applicant and the newspaper notice are absolute prerequisites to permit issuance. If other notices are not given the permit applicant should not be penalized.

This change can be accomplished by amending §6.8.a.C in the following fashion:

> 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 subparts 6.8.a.C(a)(C) and 6.8.a.C.(b), shall not be a cause for denial or delay of permit issuance, or for repeating the public comment period.

RR. Section 6.8.a - Contents of Public Notice.

In light of the Commentors' suggestion that the public participation procedures address not only the Title V operating permit changes, but any other public participation required in Regulations 13, 14 and 19, the following change should be made to Section 6.8.a.B:

> Public notices may describe more than one permit or permit part, and must identify each rule, such as a rule requiring preconstruction review, for which the public notice is required.

SS. Section 6.8.a.D - Contents of Public Notice.

While public notices should be as informative as possible, the information required by §6.8.a.D (a)(F) is excessive for a public notice. If the location of every emission point in a facility must be described the notice could run for dozens of pages or require a large number of maps. Anyone who is interested in this technical information can ask for a draft permit. Therefore, we urge deletion of §6.8.a.D (a)(F).

TT. Section 6.8.b. - Requests for Public Hearing.

A public hearing should only be held if the Chief believes it is necessary, as provided in §6.8.c. Therefore, we urge the following phrase be added to the end of the first sentence of §6.8.b:

> . . .,and 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.

UU. Section 6.8.d. - Reopening of the Public Comment Period.

There is no reason that the Chief should be required to reopen the comment period upon revision of a fact sheet. A fact sheet includes the information used by the Chief in preparing a draft permit; it is not something that, once revised, calls for a renewed comment period. The Chief can always elect to reopen or extend the comment period pursuant to §6.8.d.A(c), so there is no need to make reopening automatic upon a change of the fact sheet. To resolve this problem, the words "and reopen the comment period under this section" should be deleted from §6.8.d.A(c).

VV. Section 6.10 - Review of the Chief's Actions.

Reg. 30 does not provide for review of the Chief's actions with regard to a permit. West Virginia Code §§ 16-20-6 and 16-20-7 set out the procedure to be followed for appeals of cease and desist orders issued by the Chief, but these sections are not relevant to appeals of permits as contemplated under Reg 30. Consequently, the Commentors urge the adoption of the following as §6.10.

> 6.10 - Review of Decisions by the Chief or the Commission.
>
> a. Any final action by the Chief in granting or denying an application for a permit, permit amendment or modification, or permit renewal shall be subject to review by the Commission upon an appeal filed by the applicant or permittee, or by an affected state or other person who participated in the public comment process. If no public comment procedure was employed for the action under challenge, an appeal may be filed by the permittee, an affected state or any person adversely affected by the Chief's action. Such appeal must be filed within 30 days of the action appealed. The Commission shall follow the procedures of West Virginia Code § 16-20-6 in hearing appeals from permit actions by the Chief.

b. Any final action by the Commission in granting, modifying or denying an application for a permit, permit amendment or modification, or permit renewal shall be subject to judicial review in Circuit Court upon an appeal filed by the applicant or permittee, or by an affected state or other person who participated in the public comment process and in the appeal before the Commission. If no public comment procedure was employed for the action under challenge, an appeal may be filed by the permittee or an affected state or other person who participated in the appeal before the Commission. The opportunity for judicial review provided for in this paragraph shall be the exclusive means for obtaining judicial review of any permit action. An application for judicial review must be filed within 30 days of issuance of the Commission's decision.

c. Any application for judicial review or review by the Commission shall be limited to issues that were raised in written comments filed with the Chief or during a public hearing on the proposed permit action (if the ground on which review is sought were known at that time), except that this restriction shall not apply to any person seeking review who was not afforded an advance opportunity to comment on the challenged action if the issues raised on review are germane and material to the permit action at issue.

d. For purposes of this section, "final action" shall include a failure by the Chief to take final action to grant or deny an application within the time specified in these regulations.

WW. Section 8 - Fees.

The Commentors do not object in concept to the calculation of fees based upon actual emission from the source during the previous calendar year. However, there are changes to the specifics of that section which we believe should be made.

The most important change is the reduction in the annual fee of $25 per ton of actual emissions beginning July 1, 1995 and the reduction of the transition fee from $20 per ton. Calculations done by the Commentors, which will be set out in a

separate document, do not support a fee greater than $18 per ton. Such an amount would be sufficient to provide for the permit writers, enforcement activities and other staff and material necessary to properly run the operating permit state program. Therefore, we urge that the $20 fee in §8.1.a. be reduced to $15, and that §8.1.b be revised to substitute an $18 per ton figure.

The Commentors acknowledge that there may be some uncertainty as to exactly how much money will be generated using the $18 per ton figure, and believe that the Commission should have some flexibility in responding to the vagaries of the fee collections by imposing a temporary surcharge. This additional fee could be assessed for no more than a year at a time if additional money was needed, which would allow an increase until a justification could be provided for increasing the base fee in §8.1.b. A provision similar to the following could be used to implement this change at §8.1.c., since that paragraph will not be needed if the APCC dispenses with conditioned minor sources.

> c. On or before May 1, 1995, and each May 1 thereafter, the Commission shall determine whether fees in addition to those required under paragraph b of this subsection are needed to operate the Title V operating permit program. If such additional fees are needed, the Commission shall direct the Chief to notify all non-exempt Title V operating permit holders that an additional fee of up to $2 per ton will be assessed, payable in addition to the fees required in paragraph b of this subsection. The fees assessed pursuant to this paragraph are not cumulative and shall be assessed for not more than one year unless renewed by the Commission annually.

In addition, §8.6, which sets application fees for Title V permit holders, should be eliminated, since the per ton fee is expected to raise sufficient money to pay for the permit program.

The Commentors request clarification as to the period of time for which the fee is being paid. If, for example, a source pays a fee on July 1, 1995 and then goes out of business on July 31, 1995, does the fee paid on July 1, 1995 cover operations through December 31, 1995, so that a refund is due, or is a final fee due July 1, 1996 for emissions January 1, 1995 through July 31, 1995? From a review of §8.8, which addresses the increased or decreased fees required by adjustments in the certified emissions statements, it appears that the fee is intended to pay for prospective emissions and operations. Therefore, §8.9 should be added to clarify this, to read as follows:

> 8.9 Fees paid on July 1 of each year allow the source to continue to operate in accordance with this rule. If a source ceases to operate, or no longer requires a permit issued under this rule, the Chief shall calculate the actual emissions during the final year of operation pursuant to a permit and shall determine the actual fees for such year. If the actual fee is less than the fee that was paid, the Chief shall reimburse the source for such overpaid fee; if the actual emissions were greater, the source shall pay the difference to the Chief.

XX. Section 8.4 Consumer Price Index Riser.

The Commentors have been informed that the OAQ intends to apply the Consumer Price Index (CPI) retroactively to the base fee set forth in §8.1.b. This would treat that fee as if it had been in effect since 1989 and the CPI applied each

year thereafter. The result would be a fee of approximately $29 per ton in 1995, rather than the $25 per ton that §8.1.b. seems to assess.

Based on conversations with officials with EPA Region III, the Commentors do not believe that the APCC is applying the CPI in the manner intended by EPA. There is no need to apply the CPI retroactively; once the first year of the program has passed the CPI riser takes effect. If the APCC confirms this interpretation with EPA, §8.4 can be amended this way:

> 8.4. Consumer Price Index Rise. Beginning July 1, 1986, the fees assessed pursuant to paragraph 8.1.b shall be increased each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for 1995.
>
> a. All sources which apply for an operating permit more than one year after the effective date of the operating permit program shall pay permit fees on the first day of July of the year following the first calendar year in which operations have begun and certified emissions statements are due.

YY. Section 8.10 - Accounting for Title V Fees.

Most of the OAQ's budget will be paid by Title V fees. Those paying the fees, which represent a user fee, are entitled to know how the fees are being spent. An annual accounting would serve as an appropriate means of overseeing the use of Title V funds:

> 8.10 Beginning in 1995 the Chief shall, on or before August 31 of each year, prepare an accounting to the Commission of all Title V fees received in the previous year and the manner in which they were used to fund the Title V operating permit program.

ZZ. Section 9 - Transition Plan.

Section 9 establishes a transition plan but does not state how long the transition plan applies. Presumably, this plan will be applicable to those sources which are required to submit permits within one year of approval of the state's operating permit program. Therefore, §9.1 should be changed to provide that:

> For all permit applications which must be submitted within one year of approval of this rule by EPA, the Chief shall assign for review and processing each application for an operating permit and set a timetable for the issuance of each permit in accordance with the following criteria. . .

The APCC may have overlooked the need to provide for an extension of the permit issuance deadlines in Section 9. The Chief has 3 years from the date of program approval to issue permits for existing sources. Unless the rule specifically allows this additional time, the Chief will be required to issue all permits within the 18 months (or 12 months, if the Commentors' position is adopted) following submission of a permit application, because §9 does not currently provide any alternative time period. An additional subsection could address this:

> 9.3 With regard to all permit applications received within one year of the effective date of the permit program, the Chief shall issue permits to at least one third of such applicants within one year of the effective date of the permit program, to at least an additional one third of the applicants in the year that follows, and all remaining permit applicants in the third year.

IV. Conclusion

The Commentors appreciate this opportunity to offer comments on Reg. 30 and look forward to additional opportunities to work with the Commission on the air permit program in the future. The Commentors thank the Office of Air Quality,

especially Dale Farley and Randy Suter, for taking the time to discuss this important rule over the past year.

Respectfully submitted this 22nd day of July, 1993.

West Virginia Manufacturers Association

Appalachian Power Company

Ohio Power Company

CAPITOL CEMENT CORPORATION

SOUTH QUEEN STREET
P.O. BOX 885
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE (304) 267-8966

July 23, 1993

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

Dear Mr. Bernheim:

The following comments are being filed in relation to the proposed 45CSR30 (Requirements for Operating Permits):

1. The W. V. regulation needs to spell out exactly what fees collected can be used for so they do not end up being used for some unintended purpose.

2. The chief should determine as near as possible what fee is required and the justify this to E.P.A. even if it is below $25 per ton.

3. The fees finally recommended should be in 1993 dollars so it is clear what fee level is being established.

4. The fees of surrounding states need to be considered so that a business in W. V. is not placed at a competitive disadvantage.

5. The interim proposed fee of $20 per ton due in July 1994 on emissions for 1993 should not be allowed since E.P.A. will probably not have approved the W. V. regulations by that time. By definition the "Effective Date of the Operating Permit Program" is the date that the EPA formally approves the program.

6. The legislative intent was that the W. V. C.A.A. Regulations not be stricter than the E.P.A. requirements. Some W. V. regulations that are incorporated by reference into the permitting requirements and limitations are more strict and should be reviewed and exceptions noted in the proposed regulation so that this regulation is not stricter than E.P.A. requirements.

7. The economic impact statement is not realistic. The actual cost to industry will be at least as much to draft permits, perform any additional required monitoring, and prepare and submit compliance reports as the permit fee itself. This places the cost over $10,000,000.00 per year which must be passed on to the public or taken from employees or stockholders of companies. This amount of money should not be considered "minimal impact".

8. Insignificant activities that should not require a permit need to be listed to prevent useless regulation.

9. Some provision needs to be included which will allow the commission to adjust fees when justified without a new submission to E.P.A.

10. Regulation 13 on construction, modification, etc. needs to be coordinated with this regulation to prevent duplication.

We appreciate the opportunity to make comments on this proposed regulation which will have significant impact on industry in W. V. and ask that they be considered before a final regulation is adopted.

Sincerely,

Calvin L. Duncan

Calvin L. Duncan
V. P. Operations

CLD/djs (airpoltn.ltr)

cc: D. K. Hudak
G. H. Gess
J. E. Alexander

Mr. Dale Farley, Chief
D.E.P. Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311-2599

Appalachian Power Company
PO Box 2021
Roanoke, VA 24022-2121
703 985 2300

APPALACHIAN POWER

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

July 19, 1993

Dear Mr. Farley:

Appalachian Power Company (APCo) appreciates the opportunity to comment on the operating permit (Regulation 30) regulations. We submit these comments in addition to those submitted by the West Virginia Manufacturers Association.

APCo supports the adoption of the regulation with the following changes:

2.24 Research and development facility should be defined as listed in the attachment.

2.32 Regulated pollutant for fee calculations should exclude total suspended particulates (TSP), but include PM_{10} as listed. Regulation 30 uses TSP as part of the fee base.

3.2.d. This section should be inserted to include insignificant sources as listed in the attachment. Such sources would not be regulated, but would be included in the application.

4.1.c. All confidential information requested by the US EPA will be sent by the source or with the source's permission. Only when the source refuses to submit the material, can the State directly submit the requested material.

5.1.c. A section should be added to allow, but not require, maintaining plot plans and schematics of emission points with the permit and emission inventories in lieu of a narrative.

5.1.a.D. This section should be inserted to state that federally enforceable requirements shall be identified separately in Title V permits. The Chief may include in those permits reasonable and lawful terms and conditions

necessary to assure compliance with these rules that are not federally enforceable requirements, provided that those terms and conditions are clearly separated from federally enforceable requirements.

5.7.a. The definition of "emergency" should have the phrase "which situation requires immediate corrective action to restore normal operation...." deleted. Not all immediate corrective actions will restore normal operation in the time period implied by this section.

6.3.b. A permit shield should apply to applications submitted by the due date. Loss of the permit shield or application shield should not occur if an application is timely filed but completeness is determined after the deadline.

8.1.b. 8.1.d. 8.2 APCo urges the incorporation of the $18/ton fee as calculated by the OAQ. The OAQ has shown that this fee is adequate to run the program. We applaud the $18/ton, 4000 ton cap fee as economically competitive with neighboring states and that competitiveness will be crucial in attracting industry and jobs to West Virginia. We wholeheartedly endorse the 4000 ton cap and the exclusion of Phase I units from permit fees until January 2000. The phrase "or portion thereof" should be deleted in 8.1.b. as actual emissions must be determined within a consistent time frame.

8.1.d.A. Phase I affected units should not be required to pay fees under 45 CSR 22. The intent of Title V fees to relax the burden on some sources is evident in the Act's attempt to exempt all Phase I sources.

The monetary burden that these sources face in complying with these requirements should exempt the units from bearing additional burdens.

8.6 APCo believes the application fees should be deleted, as these are Title 5 costs and should be dealt with in the permit fees.

8.8 The yearly emissions statement (actual emissions) is a desirable method of accounting for emissions. Because of the Title IV provisions, APCo is required to install continuous emissions monitors. A fee system and inventory statement based on actual emissions is a method favorable to the utility industry. The source shall not fall under failure to have a permit or operating without a permit if there is a dispute about the adjustment.

8.8.d. The Agency must be accountable for all Title V fees. A mechanism for accountability is needed to accommodate the new fee system and ensure legislative review of the air program budget and the Title V program. Title V fees and costs should be subject to periodic, independent auditing and review. Such review could determine the adequacy of West Virginia's air program funding. Both West Virginia and the regulated community would benefit with respect to attracting and maintaining industry.

13.5.a. West Virginia should clarify that facilities which are not permitted for HAP emissions and not subject to Title III, are not subject to fees for HAP emissions. West Virginia should not charge fees for HAP emissions until the source is subject to a MACT standard.

Thank you for the chance to submit these comments and to participate in the informal meetings with the OAQ.

Sincerely,

Robert J. Robinson

R. J. Robinson
Environmental Affairs Director

RJR:jm
Attachments

c: David L. Yaussy
Robinson & McElwee
P.O. Box 1791
Charleston, West Virginia 25325

"RESEARCH AND DEVELOPMENT SOURCES" 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, EXCEPT IN A DE MINIMIS MANNER; THE TEMPORARY USE OF NORMAL PRODUCTION FACILITIES IN A RESEARCH AND DEVELOPMENT MODE TO TEST THE TECHNICAL OR COMMERCIAL VIABILITY OF ALTERNATIVE RAW MATERIALS OR PRODUCTION PROCESSES, PROVIDED THAT THE USE DOES NOT INCLUDE THE PRODUCTION OF AN INTERMEDIATE OR FINAL PRODUCT FOR SALE OR EXCHANGE FOR COMMERCIAL PROFIT; THE EXPERIMENTAL FIRING OF ANY FUEL OR COMBINATION OF FUELS IN A BOILER, HEATER, FURNACE, 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, DURING THOSE PERIODS OF RESEARCH AND DEVELOPMENT, THE HEAT GENERATED IS NOT USED FOR NORMAL PRODUCTION PURPOSES OR FOR PRODUCING A PRODUCT FOR SALE OR EXCHANGE FOR COMMERCIAL PROFIT; AND SUCH OTHER SIMILAR SOURCES AS THE DIRECTOR MAY PRESCRIBE BY RULE.

PART VIII

FEDERAL OPERATING PERMITS FOR STATIONARY SOURCES

(RULE 8-5)

§ 120-08-0501 Applicability.

A. Except as provided in subsection C and E of this section, the provisions of this rule apply to the following stationary sources:

1. Any major source.

2. Any source, including an area source, subject to the provisions of Parts IV and V as adopted pursuant to section 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to the provisions of Part VI as adopted pursuant to section 112 of the federal Clean Air Act.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. The provisions of this rule shall not apply to the following:

1. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Rule 5-5.

2. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 61, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos), section 61.145 (Standard for Demolition and Renovation), as prescribed in Rule 6-1.

3. Any source that would be subject to this rule solely because it is subject to regulations or requirements concerning prevention of accidental releases under section 112(r) of the federal Clean Air Act.

4. Insignificant activities and levels within a stationary source

subject to this rule are as follows, except to the extent covered under § 120-08-0505 L:

INSIGNIFICANT SOURCES

a. Emissions units.

(1) Gas flares or flares used solely to indicate danger to the public.

(2) Combustion units designed and used exclusively for comfort heating that use liquid petroleum gas or natural gas as fuel.

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

(4) Indoor or outdoor kerosene heaters.

(5) Space heaters operating by direct heat transfer.

(6) Repairs or maintenance where no structural repairs are made and where no new or permanent facilities are installed.

(7) Safety devices, if associated with a permitted emissions source.

(8) Air contaminant detectors or recorders; combustion controllers or shutoffs.

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

(10) Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

(11) 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.

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

(13) Portable generators.

(14) Firefighting equipment and the equipment used to train firefighters.

b. Emission levels for emissions units other than those listed in subsection C 4 a of this section.

(1) Emissions units with uncontrolled emissions of 1 ton per year or less of nitrogen dioxide, sulfur dioxide, particulate matter (PM_{10}), or volatile organic compounds.

(2) Emissions units with uncontrolled emissions of 10 tons per year or less of carbon monoxide.

(3) Emissions units with uncontrolled emissions of 12 pounds per year or less of lead.

(4) Emissions units with uncontrolled emissions of 100 pounds per year or less of any Class I or II substance subject to a standard promulgated under or established by title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any emissions unit that is determined to be shutdown under the provisions of § 120-08-0514.

D. Deferral from initial applicability.

1. Sources not deferred from initial applicability.

The following sources shall not be deferred from the obligation to obtain a permit under this rule:

FEDERAL EXPRESS

WV DIV OF ENVIR. PROTECT.
OFFICE OF AIR QUALITY

1993 AUG -5 A 8:40

RECEIVED

Allegheny Power System
Bulk Power Supply
800 Cabin Hill Drive
Greensburg, PA 15601 (412) 837-3000

Mr. Dale Farley
Chief, WV Office of Air Quality
1558 Washington Street, East
Charleston, WV 25311

August 4, 1993

Re: Operating Permit Regulations (45CSR30)

Dear Mr. Farley:

Allegheny Power Service Corporation, on behalf of Monongahela Power Company and The Potomac Edison Company, offers the following comments on Regulation 30 concerning the operating permit regulation.

PERMITS

3.2.d. Exemptions - A section should be inserted to make provisions for insignificant emissions units (as listed in the attachment). The federal rule allows states to identify insignificant emission units which are not subject to permitting requirements.

3.4. Fugitive Emissions - It is not appropriate to address fugitive emissions in the permit application or operating permit in the same manner as stack emissions. Fugitive particulate matter is adequately addressed in 45CSR2, Paragraph 5.1 a, b, and c. Therefore, we suggest Section 3.4 be deleted from Regulation 30.

APPLICATION FOR PERMIT

4.1.b. Complete Application - If the Air Pollution Control Commission (APCC) determines that an application is not complete after the deadline for permit applications, the permit application shield of Section 6.2 should apply as long as the permit applicant submits the requested additional information within the time specified by the APCC. We suggest the last sentence of 4.1.b be changed as follows:

"The sources's ability to operate without a permit, as set forth in Section 6.2 of this rule, shall be in effect from the date of the permit application until the final permit is issued, provided that the applicant submits any requested additional information by the deadline set by the Chief. If the Chief determines that a permit application which was timely filed is incomplete, and the deadline for filing an application has passed, the Chief may request additional information necessary to make the permit application complete and specify the time for submitting it. If such additional information is received within a timely manner, the permit application will be

treated as having been complete on the date that it was first filed with the Chief."

4.1.b.A. Complete Application - A section should be inserted to develop detailed specific criteria for determining whether or not an application is complete. This would allow the APCC to more specifically guide permit applicants in providing the information necessary for a complete application and avoid confusion and delays in issuance of operating permits.

PERMIT CONTENT

5.1.a.D. Permit Content - A section should be inserted to allow that federally enforceable requirements be identified separately in Title V permits. Reasonable and lawful terms and conditions necessary to assure compliance with those rules that are not federally enforceable requirements, may be included in the permits, provided that those terms and conditions are clearly separated from federally enforceable requirements.

5.7.a. Emergency Provision - We do not agree that an "emergency shall not include . . . improperly designed equipment . . ." A "sudden and reasonably unforeseeable event," which is an emergency, could be the indirect result of equipment, maintenance or operator error. Additionally, since emission limits may be established on bases other than technology, the phrase "technology-based" should be deleted from the first sentence defining an "emergency."

PERMIT ISSUANCE, RENEWAL, REOPENINGS, AND REVISIONS

6.3.b. Permit Renewal and Expiration - A permit shield should apply to permit application renewals submitted by the due date. If completeness has not been determined by end of term of existing permit, loss of permit shield should not occur. Also, a phrase should be added at the end of this section stating, ". . . or permission granted by the Director or his designee to continue to operate." This change will prevent an entire facility being shut down because someone neglected to apply for a renewal.

6.5.a.F. Permit Modifications - The permit shield should apply to minor permit modification unless prior review could not occur by the APCC.

FEES AND FEE CAPS

8.1.b. Fees - We disagree with charging an annual fee believed to be higher than needed to support the permit program. The APCC staff believes that approximately $18/ton is needed. Under the proposed regulation, a $25/ton fee indexed to inflation leads to a potential fee of approximately $28.40/ton. The APCC should establish a fee it believes is necessary to

support the permit program and no more. If EPA won't accept the fee, then APCC can always modify its proposal. If the APCC is going to use the 1989 CPI, then whatever fee is charged should be discounted to take into account the indexing that will occur because of the CPI. For example, if APCC needs $18/ton/year to run the program, the fee initially set should be approximately $16/ton since that is the fee that will be indexed to reach the $18/ton/year needed. Also, the rule needs an automatic adjustment mechanism to modify the fee annually rather than require a separate rule making. We suggest APCC consult with the DEP and consider the fee mechanism it uses to annually adjust the underground storage tank fee. This has worked well and fully met the needs of the DEP and those regulated. In addition, we support the proposal made by the West Virginia Manufacturer's Association on this subject because it also will resolve this issue.

8.1.d. & 8.2 Fee Cap - The current temporary fee exemption for Phase I units and fee caps of 4,000 ton of emissions per year are appropriately included in the rule and must remain in order to assure proper fee collections.

8.6 Application Fees - This section should be deleted as these fees are costs associated with Title V and should be included as administrative costs in the permit fees.

8.8.b.B. Certified Emissions Statement - A source should not be considered out of compliance, if operating permits are withheld due to a dispute over adjustments.

8.8.d. Certified Emissions Statement - The APCC must be accountable for all Title V fees. A mechanism for accountability is necessary to accommodate the new fee system and ensure legislative review of the air program budget and the Title V program. Title V fees and costs should be subject to periodic, independent auditing and review. This review could determine whether West Virginia's air program funding is adequate. Both West Virginia and those regulated would benefit with respect to attracting new and maintaining existing business and industry.

13.5 Authority of the Chief. . . - The following phrase should be added to clarify which emissions are subject to the emissions fee: "Emissions that are not regulated or limited at a facility or are unquantifiable are not subject to the emission fee of Section 8."

The Monongahela Power and The Potomac Edison Company appreciate the opportunity to comment on Regulation 30 and to participate in the informal

meetings with the Office of Air Quality. Should you need additional information or have any comments, please call Yvonne Clarkson at (412) 830-5686 or myself at (412) 838-6806.

Sincerely,

L. D. Myers

LDM/dls

cc: Britt Bernheim, APCC
Randy Suter, APCC

PART VIII

FEDERAL OPERATING PERMITS FOR STATIONARY SOURCES

(RULE 8-5)

§ 120-08-0501 Applicability.

A. Except as provided in subsection C and E of this section, the provisions of this rule apply to the following stationary sources:

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B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. The provisions of this rule shall not apply to the following:

1. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Rule 5-5.

2. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 61, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos), section 61.145 (Standard for Demolition and Renovation), as prescribed in Rule 6-1.

3. Any source that would be subject to this rule solely because it is subject to regulations or requirements concerning prevention of accidental releases under section 112(r) of the federal Clean Air Act.

4. Insignificant activities and levels within a stationary source

subject to this rule are as follows, except to the extent covered under § 120-08-0505 L:

INSIGNIFICANT SOURCES

a. Emissions units.

(1) Gas flares or flares used solely to indicate danger to the public.

(2) Combustion units designed and used exclusively for comfort heating that use liquid petroleum gas or natural gas as fuel.

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

(4) Indoor or outdoor kerosene heaters.

(5) Space heaters operating by direct heat transfer.

(6) Repairs or maintenance where no structural repairs are made and where no new or permanent facilities are installed.

(7) Safety devices, if associated with a permitted emissions source.

(8) Air contaminant detectors or recorders, combustion controllers or shutoffs.

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

(10) Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

(11) 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.

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

(13) Portable generators.

(14) Firefighting equipment and the equipment used to train firefighters.

b. Emission levels for emissions units other than those listed in subsection C 4 a of this section.

(1) Emissions units with uncontrolled emissions of 1 ton per year or less of nitrogen dioxide, sulfur dioxide, particulate matter (PM_{10}), or volatile organic compounds.

(2) Emissions units with uncontrolled emissions of 10 tons per year or less of carbon monoxide.

(3) Emissions units with uncontrolled emissions of 12 pounds per year or less of lead.

(4) Emissions units with uncontrolled emissions of 100 pounds per year or less of any Class I or II substance subject to a standard promulgated under or established by title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any emissions unit that is determined to be shutdown under the provisions of § 120-08-0514.

D. Deferral from initial applicability.

1. Sources not deferred from initial applicability.

The following sources shall not be deferred from the obligation to obtain a permit under this rule:

I. **Strategy for Creating "Synthetic Minors":**

As of now, EPA does not have a final position on whether it has the authority under part 70 to approve a secondary permitting program such as " § 45-30-11 Permits for Conditioned Minor Sources". If West Virginia views the creation of "synthetic minors" as a critical feature of its comprehensive state air quality permitting system, EPA recommends utilizing a SIP approved operating permit program as a vehicle to establish federally enforceable limitations on a source's potential-to-emit. Please keep in mind that this is not a mandatory part of the Title V operating permit program submittal. Even if the process of getting a state operating permit program approved into the West Virginia SIP delays the state's ability to create "synthetic minors", it may be of little implementational consequence. The permitting authority (as part of the transition plan) has three years to act on initial permit applications. Although sources interested in becoming "synthetic minors" must submit Title V permit applications within one year of program approval, the permitting authority may delay issuing Title V permits for these applicants for up to three years. This gives West Virginia adequate time to have a SIP approved operating permit program in place for those initial sources wishing to become "synthetic minors".

II. **Civil Penalties: § 16-20-8, 45 CSR 32**
40 CFR, Section 70.11(a)(3)(i)

(a) The language of 16-20-8(a) in West Virginia's code states " Any person who violates any provision of this article, any permit or any rule or order...shall be subject to a civil penalty not to exceed $10,000 for each day of such violation." To the extent that this language could be interpreted otherwise, EPA needs to be assured that in the case of multiple violations occurring on the same day, each violation will be treated independently (i.e. $10,000 per day <u>per violation)</u> This can be done in the AG's statement.

(b) It must be made clear that any "minor" violations that will be exempted from civil penalties (as described in 16-20-8(a)) will not include violations of federal requirements (such as applicable requirements in the permit, part 70 fee or filing requirements etc.). If the definition of a "minor violation" in 45 CSR 32 ("Reg 32") can be read to include any federal requirement, it may have to be amended. (EPA did not

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have a copy of "Reg 32" at the time these comments were drafted.)

III. Criminal Penalties: § 16-20-8
40 CFR, Section 70.11(a)(3)(ii)-(iii)

(a) Same as (a) above.

(b) Paragraph (1), with its absolute limit of $25,000 per violation for knowing misrepresentations is inconsistent with part 70's per day per violation requirement. This provision may have to be changed. Also, as described in 16-20-8(b), it is not provided that criminal fines may be imposed for knowingly rendering inaccurate any required monitoring device or method as required by section 70.11(a)(3)(iii).

IV. Confidentiality: § 16-20-12, 45 CSR 31
40 CFR, Section 70.4(b)(3)(viii)
40 CFR, Section 70.5(a)(3)

It is EPA's interpretation that West Virginia can not deem a Title V operating permit "confidential" pursuant to 45 CSR 31. To the extent the A.G. must certify that West Virginia has adequate authority to comply with the requirements of part 70, EPA needs to be assured that this interpretation is consistent with West Virginia law.

EPA is concerned that under 16-20-12 and 45 CSR 31, the permitting authority does not have the authority to require that confidential information be submitted to EPA as required in section 70.5(a)(3). This problem can be fixed in "Reg 30", however, West Virginia law may require an amendment to "Reg 31" or § 16-20-12 of the code.

V. Judicial Review § 16-20-17, § 16-20-6
70.4(b)(3)(x)-(xiii)

EPA must be assured that the details of 70.4(b)(3)(x)-(xiii) are accounted for in the legislation and/or regulations. EPA is looking closely at West Virginia's law in conjunction with its Administrative Procedures Act. No comments can be made at this time.

VI. Compliance Certifications: 40 CFR, Section 70.4(b)(4) and (5)

Under section 70.4(b)(4) and (5), States are required to describe how they will incorporate monitoring, recordkeeping, reporting and compliance certification requirements into their operating permits, and provide

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a complete description of their compliance tracking and enforcement program.

The compliance provisions contained in the West Virginia legislation are essentially restatements of the compliance provisions contained in 40 CFR Part 70, and on their face minimum requirements for approval. However, some clarifying language would be useful and is strongly recommended for incorporation.

Compliance (certification) must be based in data generated by periodic monitoring and testing methods. The Agency interprets the regulations to require this periodic monitoring and testing data be used in the compliance certification and used as evidence of continuous or intermittent compliance, and for direct enforcement purposes. (i.e. evidence of noncompliance/violation of emission limitation(s) specified in the permit).

In order to achieve this, where the source proposes to use monitoring or operating parameters as the periodic monitoring or testing technique (as opposed to direct emissions monitoring), an enforceable limit or range of operation for the parameter monitored or tested periodically must be incorporated into the operating permit. In its permit application, the source would need to show this parameter correlates to its emission limit.

Although the West Virginia regulations do not contain language which precludes use of monitoring or testing data for direct enforcement purposes, we believe it would be better if the regulations specifically state this. Otherwise, West Virginia may have trouble enforcing these provisions. Therefore, we strongly recommend language regarding the direct enforceability of monitoring and /or testing data be included now, so potential problems may be averted in the future.

VII. "Reg 30" Definitions of "Air Pollutants" and "Statutory Air Pollution"

Under the definitions section of "Reg 30", an "air pollutant" must have the potential to result in "statutory air pollution", and "statutory air pollution" must be injurious. Consequently, if a pollutant does not have the potential to cause injury, it is not an "air pollutant". Although these definitions in "Reg 30" are not used for applicability purposes (i.e. defining a "major source"), terms such as "pollutant" and "air pollutant" are used frequently throughout the rule. This is a problem because emissions of all "regulated air pollutant(s)" defined

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in section 2.31 of "Reg 30" must be accounted for in the implementation of the operating permits program, not just those which are "injurious". Please see the April 26, 1993 Guidance entitled "Definition of Regulated Air Pollutants for Purposes of Title V" for further clarification.

VIII. **Ensuring Adequate Fees:**

Section 16-20-5(a)(18) creates a special fund for "fees, penalties and interest collected for operating permits..." EPA must be assured that the penalties referred to here do not include penalties collected from enforcement actions (i.e. only penalties from failure to pay on time).

IX. **Other Comments on "Reg 30":**

2.5 Must be made clear that EPA promulgated standards with future-effective compliance dates are applicable requirements. (Section 2.5.1 may have attempted to address this, however, for purposes of clarity, please change language to read "Any emissions cap [and related] or requirements established for the source by agreement with the Chief...")

2.5.a "Applicable requirements" must include language "...approved or promulgated by U.S. EPA"

2.5.j Part 70 gives the administrator the authority to exempt Title VI requirements. EPA must be assured that the commission will not make determinations which would relax the stringency of such a decision made by the administrator.

2.5.1 See comment for 2.5.

2.11 The term "discharge" should be defined.

2.17 Amend language to read "...potential to emit any regulated air pollutant.

2.23.a and 2.23.b The reference to "listed" sources is unclear. Please clarify.

2.23.d.C Should read as follows: "Collect, capture, destroy and/or otherwise treat hazardous air pollutants released from a process, stack, storage, or fugitive emissions point;"

2.23.d.D Should read as follows: "Are design, equipment, work practice or operational methods;"

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2.24 There is no provision in part 70 which allows R & D facilities to be treated separately. It must be made clear that all emissions from a source within a two-digit SIC code must be counted in determining whether a source is "major" for purposes of Title V applicability.

2.24.a.A Should address future changes to the list.

2.24.b The Administrator has the authority to establish by rule major sources of fugitive emissions of a pollutant. EPA will need to be assured that any such ruling by the commission will be at least as stringent as the ruling by the Administrator.

2.26 and 2.27 These definitions are o.k. However, please be very careful when using these terms within the context of the rule so that the proper term is used.

2.31.d See comment 2.24.a.A

3.2.a The Administrator will complete a rulemaking to determine how the program should be structured for nonmajor sources. EPA will need to be assured that any deferral the chief makes from the obligation to obtain a Title V operating permit for these sources will be consistent with, or at least as stringent as the Administrator's future rulemaking.

4.1.a.A.e For purposes of clarity, the term "emissions point" should be defined.

4.1.b For purposes of clarity, should read as follows: "...provided for [certain] in subsection 6.5.a of this rule, pertaining to minor permit modifications."

4.3.h.C EPA will need to be assured that upon EPA promulgation of Title IV regulations, its rules will supersede schedules and methods of compliance affected sources are using to achieve compliance with the acid rain emissions limitations.

5.1 EPA will need to be assured that allowances will accounted for according to the procedures established in regulations under Title IV of the Act.

5.2.b It should be clarified what procedure must be followed for permit issuance, revisions, modifications and reopenings with respect to state-only requirements.

5.3 Additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act must be included in permits.

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5.4 It should be made clear that general permits must go through EPA and affected state review.

5.4.a Should reference public participation procedures provided in section 6.8 of this rule.

5.4.e The term "individual permit action" should be defined.

5.4.e.A This section is unclear. The term "source-specific" permit should be defined.

5.6 Provisions in 70.6(f)(3)(i) and (iv) should be addressed in this section.

5.8 Amend language to read as follows: "Operational flexibility. For each permit issued under this rule, the Chief may authorize a permitted facility to make section 502(b)(10) changes within the facility. No [such] changes [shall be a modification] under any rule (including 45 CSR 13, 45 CSR 14, 45 CSR 15, or 45 CSR 19) promulgated by the Commission in accordance with Title I of the Clean Air Act shall be processed under these operational flexibility provisions. Section 502(b)(10) changes [and the change] shall not result in a level of emissions exceeding the emissions allowable under the permit."

5.9.e Part 70 prohibits "off-permit" changes to be made for changes subject to Title IV requirements. EPA will need to be assured that such changes will not be made without a permit revision.

6.1.b EPA will need to be assured that West Virginia will adhere to permit processing time requirements for affected sources according to Title IV regulations.

6.1.e For purposes of clarification, amend language to read: "...modification or renewal for public comment. In accordance with subsection 6.9, the Chief ..."

6.4.b Provisions in sections 70.7(d)(vi) and 70.7(d)(2) should be addressed in this section.

6.5 Provisions in section 70.7(e) should be addressed in this section.

6.5.a.A.a.E EPA needs to be assured that no modifications under Title I will be processed via minor source modification procedures.

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6.5.a.E Amend language to read as follows: "...6.5.a.D(a) through [(d)](c)."

6.6.a.C and 6.6.a.D EPA must be assured that if 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, the permit will be reopened according to provisions in 6.6.

8 The term "actual emissions" should be defined.

9.1 This section does not satisfy the requirements for the transition plan in 70.4(b)(11). These regulations must have sufficient detail to effectively implement the transition plan.

11.4.a The provision does not specify on what the time period for tons per year is based. It should specify that this limit is based on a rolling average, just in case sources may argue the limit be based on a calendar year, which is very difficult to enforce.

13.2 and 13.3: These rules require clarification with respect to the last sentence of the rules which reads "Such MACT standards must be equivalent to any applicable standard promulgated for such sources by U.S. EPA." Case-by-case determinations are made in the absence of an EPA promulgation. If the State rules intend to reflect situations where EPA has promulgated a MACT standard, but the State has not yet adopted such standard in accordance with its adoption process, then such a statement to that effect should be added. If there is some other circumstance to justify the last sentence, then it should be added; otherwise, the sentence should be deleted as it is redundant and possibly confusing.

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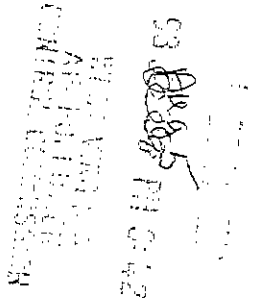
MEMORANDUM

SUPPORTING ALTERNATIVE TITLE V

OPERATING PERMIT FEES



Submitted By:

Environmental, Safety & Health Committee
West Virginia Manufacturers Association
Appalachian Power Company
Ohio Power Company

August 5, 1993

MEMORANDUM SUPPORTING ALTERNATIVE TITLE V FEE DEMONSTRATION

OPERATING PERMIT FEES

I. INTRODUCTION

On June 2, 1993, the Air Pollution Control Commission ("APCC") proposed Regulation 30, 45 CSR 30, "Requirements for Operating Permits." This regulation is designed to implement the operating permit program as required by Title V of the Clean Air Act Amendments ("CAAA") of 1990. 42 U.S.C. § 7661 et seq. The Department of Commerce, Labor, and Environmental Resources, Division of Environmental Protection ("DEP"), Office of Air Quality ("OAQ") is responsible for implementing the operating permit program[1]. As part of a condition of state approval by the federal Environmental Protection Agency ("EPA"), each state must collect operating permit fees sufficient to

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[1] Until July 1, 1992, inspection, compliance, monitoring, and enforcement authority over the rules and regulations promulgated by the APCC was vested in the office of the Director of the APCC. By executive order signed by Governor Gaston Caperton, effective July 1, 1992, this inspection, compliance, monitoring, and enforcement authority was transferred to the Chief of the new Office of Air Quality ("OAQ") of the West Virginia Division of Environmental Protection. To date, however, this reorganization has had no effect on the Commission's authority to promulgate rules and regulations for the control of air pollution in West Virginia.

administer the operating permit program, including initial issuance of permits as well as subsequent modifications. The proposed Regulation 30 requires submission of fees of $25 per ton of actual emissions and a transition fee of $20 per ton. The West Virginia Manufacturers Association ("WVMA"), Appalachian Power Company, ("APC") and Ohio Power Company ("OPC") contend that the proposed fee scale is in excess of that necessary to operate the Regulation 30 permit program. As such, we provide this memorandum in support of a fee of $9.50 per ton of actual emissions.

We acknowledge the need for adequate funding of the Title V program, especially as it relates to quick and timely issuance of permits and permit modifications. This is a matter of supreme importance to the regulated community. Nevertheless, the Title V program funding should not become a source of general revenue funding for the State as a means of subsidizing the entire air program. We, therefore, do not support any "default" position by the APCC and the OAQ that would simply adopt a fee of $25 per ton approach because it is a figure certain to win EPA's approval. Rather, we urge a careful analysis of the present and anticipated future needs of the Reg. 30 program so that a sufficient but not exorbitant fee is assessed.

II. MANDATORY LEGAL REQUIREMENTS

A. Minimum Operating Program Requirements

1. Federal Statutory and Regulatory Mandates

The CAAA requires any source subject to the Title V program to pay an annual fee sufficient to cover the costs of developing and administering the permit program. CAAA §502(b) (3)(A); 42 U.S.C. § 7661a(b)(3)(A). The Administrator of EPA

has promulgated regulations establishing the minimum elements of a permit program that must be supported by those fees, including:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance, certification, and related data entry;

(iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(v) Emissions and ambient monitoring;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

(viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations.

40 CFR § 70.9(b). As part of the information requirement, the state must submit a description of the agency staff who will carry out the state program, including the number, occupation, and general duties of the employees.[2] 40 CFR § 70.4(b)(8)(iii). Furthermore, the state must provide an estimate of the permit program costs for the first

[2] The state need not submit complete job descriptions for every employee carrying out the state program. 40 CFR § 70.4(b)(8).

four years after approval, and a description of how the state plans to cover those costs. Id.

While the Title V program will be an extensive, perhaps the largest, part of a state air agency's budget, the fees that can be collected are limited to those needed for the operating permit program. The fees are not intended to pay for a state air pollution control agency's other programs. Fees "shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program." 42 U.S.C. 7661a(b)(3)(iii). The federal regulations emphasize that a state program[3] must collect fees that are sufficient to cover the permit program and ensure that any fee required "will be used solely for permit program costs." 40 CFR § 70.9(a). "Program requirements" are limited to the operating permit requirements. EPA has rejected the use of operating permit fees to cover all air program costs. 57 Fed. Reg. at 32291.

2. West Virginia Statutory and Regulatory Authority

To comply with the mandates of the federal statutory and regulatory requirements, the Legislature amended the Air Pollution Control Act ("the Act") in 1992. The Act authorizes the APCC to promulgate rules to implement an operating permit program, including imposition of fees.[4] W. Va. Code § 16-20-5(18). Fees, penalties and

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[3] "Permit program costs" is specifically defined as:

> [A]ll reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in § 70.9(b) of this part (whether such costs are incurred by the permitting authority or other State or local agencies that do not issue permits directly, but that support permit issuance or administration). 40 CFR § 70.2

[4] Any person subject to operating permit fees is exempt from the imposition of an annual operating certificate fee. W. Va. Code § 16-20-5(18).

interest collected for operating permits "shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program." Id.

Although the fees collected must be spent only for the purposes set forth in W. Va. Code § 16-20-1 et seq., expenditures "are not authorized from collections but are to be made only in accordance with appropriation." Id. Furthermore, "[a]mounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature."[5] Id. This creates a certain tension, with EPA requiring a fee system which sends the fees directly from the permit holders to the agency administering the Title V program, while the state requires appropriation by the legislature before the money can be spent and allows capture of "excess" funds. The State has an incentive to keep fees high in order to generate money which can be converted for use as general appropriations. To do so, though, would be inconsistent with the CAAA and a breach of faith with the permit holders who are funding the Title V program.

B. Fee Determination

The EPA Administrator will not approve any program unless the State demonstrates that "the program will result in the collection, in the aggregate, from all [permitted] sources. . . of an amount not less than $25 per ton per year of each regulated pollutant or such other amount as the Administrator may determine adequately reflects

[5] For the 1993 fiscal year, expenditures are permitted from collections without appropriation by the Legislature. W. Va. Code § 16-20-5(18)

the reasonable costs of the permit program." 42 U.S.C. § 7661a(b)((3)(B)(i)[6]. In its simplest terms, this establishes a rebuttable presumption that $25 per ton is needed to fund the Title V program activities. However, if the responsible state agency can show that its program can be adequately funded by charging a lower per ton fee (or by charging a combination of several types of fees) it may do so. The ultimate test is whether the fee generates sufficient revenues to support all of the specified air operating permit program functions. See 57 Fed. Reg. at 32291.

In the preamble to the operating permit rule, EPA states:

> Because the nature of permitting related activities can vary greatly from State to State, the EPA intends to evaluate each demonstration individually using the definition of 'permit program costs'...

57 Fed. Reg. at 32291. In evaluating West Virginia's permit program, the OAQ should consider a variety of cost-saving measures that will allow it to efficiently use its resources in administering the permit program and lowering program costs. This can be accomplished by adopting general permits, eliminating regulation of insignificant activities or emissions exemptions, and writing permits to allow operational flexibility. This would allow the State to take advantage of EPA's willingness "to be flexible in determining whether a State program meets the required minimum elements." 57 Fed. Reg. at 32265.

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[6] Both the CAAA and the Code of Federal Regulations require an increase in the amount of the fee on an annual basis by the percentage, if any, of the increase in the Consumer Price Index ("CPI"). See 42 U.S.C. § 7661a(b)(3)(B)(v) and 40 CFR § 70.9(b)(2)(B)(iv). The state statutory requirements do not reference or require an increase based upon the CPI. However, proposed Regulation 30, 45 CSR 30, § 8.4 would impose the CPI increase. While we do not object to use of the CPI, we do oppose any retroactive application. See Comments Regarding the Operating Permit Rule, proposed by the APCC and prepared on behalf of the WVMA, Appalachian Power Company and Ohio Power Company, filed July 23, 1993.

C. Fee Calculations

The APCC has proposed generating revenues for the Title V program through use of a single per ton fee assessed on actual emissions of regulated pollutants. The amount of money generated by the fee depends upon two factors - the number of tons of emissions from all major sources, and the fee per ton of pollutant emitted by major sources. By calculating the cost of the permit program and dividing by the number of tons of total emissions, it is possible to calculate a per ton fee.

Determining the amount of total emissions requires identification of the "major sources" that will be required to obtain operating permits, and therefore required to pay permit fees. The definition of a major source is based on different threshold levels of particular regulated pollutants, depending on the location of the facility. For example, a facility which emits volatile organic compounds ("VOC") in an area that is in "severe" ozone non-attainment, will be a major source at a lower threshold TPY than if the facility was located in an attainment or unclassified area. The following chart is a simplified version of the federal requirements of "major source" subject to obtaining an operating permit:

1. 10 TPY Single Hazardous Air Pollutant ("HAP")
   25 TPY Combination of different HAP's
   (Except oil & gas exploration and pipeline compressors)

2. 100 TPY Potential to emit any air pollutant

   Fugitive emissions excluded except for specific industrial categories

3. Ozone non-attainment areas - Cabell, Wayne, Kanawha, Putnam, Wood
VOC & NOx (Oxides of Nitrogen)

100 TPY - Marginal/Moderate
25 TPY - Severe
10 TPY - Extreme
50 TPY - Ozone Transport Region
50 TPY - Serious - Carbon Monoxide ("CO")

4. PM_{10} - Particulate Matter

70 TPY - Serious

Because of the attainment designations in West Virginia, a "major source" will be limited to any stationary source which emits 10 TPY of a single HAP or 25 TPY of a combination of HAPs, or has the potential to emit[7] 100 TPY of any air pollutant. See 40 CFR § 70.2 and proposed Regulation 30, 45 CSR 30 § 2.24.

A state may exclude from fee calculations any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant. 42 U.S.C. § 7661a(b)(3)(B)(iii); 40 CFR § 70.9(b)(2)(ii)(B). Accordingly, the APCC has proposed to cap the collection of fees on emissions greater than 4,000 TPY. 45 CSR 30, § 8.2.

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[7] The definition of "potential to emit" means, in pertinent part, as follows:

> [T]he 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.
> 45 CSR 30, § 2.29; see also, 40 CFR § 70.2.

III. CURRENT AND PROJECTED STAFFING AND FUNDING LEVELS

The OAQ current and projected staffing and funding levels is best represented by the following chart:

OAQ Staffing and Funding Analysis For Air Management Program
Title V Implementation

	Actual as of 7/1/92 Personnel	Current Year Plan Personnel	Implementation 1993-1994		Implementation 1994-1995	
			Increase	Total	Increase	Total
Administrative/ Support (Clerical, acct, etc.)	12.6	14.6	5.9	20.5	4	24.5
Permits/Compliance (Professional & Technical)	20	26	14	40	10	50
Program Planning Support	6	7	2	9	2	11
Ambient Monitoring Lab Support	14	16	---	16	5	21
Legal	2	2	1	3	1	4
Total Plus Part Time and Assignees	54.6	65.6	22.9	88.5	22	110.5
Total Funding Needed	---	3.66 million	4.94 million		6 million	
Title V Source	---	---	3.34 million		4.3 million	

The OAQ believes that, in the first full year of permit issuance (which will fall in the State's 1995 fiscal year) it will need approximately 4.3 million dollars to fund Title V activities. OAQ assumes that there are now slightly fewer than 300 facilities which are clearly subject to Regulation 30. There are approximately 400 additional sources which are probably minor sources, although some of facilities may be added to the Title V (Regulation 30) list once the potential emission data base is complete. If there are

approximately 350 major sources required to have permits, and the OAQ is allowed 3 years in which to write the permits for those sources, then 120 Title V permits will be issued for each of the first three years of the permit program. An "average" operating permit is predicted to entail one "man-month" of professional staff time.

In summary, the OAQ predicts:

TITLE V PERMIT PROGRAM ACTIVITY

* Title V Permit Program: 120 permits/yr
  20 complex

* Compliance Monitoring and Inspections[8]

Major source	350	inspections per year
Minor sources	400	inspections per year
Complaints	700	inspections per year
Stack Tests	100	per year
NOV's	100	per year
CEM audits	40	per year

The OAQ estimates that it will require approximately 56 more employees in the 1995 fiscal year than it employed on July 2, 1992, most of whom would be added to address Title V program activities. Funding for the OAQ in fiscal year 1995 is expected to be about 6 million dollars, with 4.3 million dollars of that figure used to run the Title V permit program.

[8] Not all of these compliance and inspection activities are for the Title V permittees.

The OAQ has also tried to determine the amount of regulated pollutants that will be emitted from major sources. That inventory reveals the following total actual emissions estimates for the following classes:

All non-utility sources (TPY):	161,000
Phase II utilities (TPY):	58,000
Phase I utilities (TPY):	53,000
TOTAL:	272,000

These figures assume exclusion of all emissions of more than 4,000 tons per pollutant, per source, per year and may involve some some minor amount of double counting of emissions where VOC/PM and hazardous air pollutants overlap.

Assuming that fees are assessed on all emissions except those from Phase I facilities, the Title V program cost (4.3 million dollars) divided by the tons of actual emissions (219,000) results in a per ton fee of $19.63. This is extremely close to the $18 per ton figure originally recommended by the Commentors and far below the default figure of $25 per ton.

Assessing a $25 per ton fee on 219,000 tons of actual emissions would yield approximately 5.475 million dollars. This is far more than the OAQ will need, and almost the cost of running the entire program in fiscal year 1995.

The Commentors acknowledge the impossibility of making precise estimates of the amount needed to run a program which does not yet exist. Nevertheless, we believe that

the cost of operating the Title V program is lower than the OAQ has estimated, and will cost substantially less than would justify a $25 per ton fee. We base this opinion on the premise that the number of major sources (those which will be subject to Title V) will be less than estimated by the OAQ.

We have evaluated the emissions inventory that was prepared by the OAQ and from it have identified about 200 sources which are major sources in terms of actual emissions. Of the remaining sources, some could qualify as major sources because their potential to emit is greater than the applicable threshold levels. However, assuming that the OAQ adopts a provision in Reg. 13 or Reg. 30 which allows the creation of synthetic minor sources,[9] there will be a great incentive for any source which has actual emissions of less than the threshold amounts to accept federally-enforceable limits which limit the potential to emit to their actual levels. This would allow these synthetic minor sources to avoid the permit program, and would relieve the OAQ of writing Title V permits for them.

Even if these assumptions are wrong, there are other reasons the Commentors are confident that fewer permit writers will be needed than the OAQ has estimated. For one, the OAQ has the option of developing general permits which would greatly lighten the permitting load. Gas compressor engines are a good example of sources with uniform operations and emissions for which a general permit could be prepared and made available to compressor operators. Certain types of boilers will also have similar features

[9] A synthetic minor source is intended here to describe a source which has accepted federally-enforceable controls and limitations on its potential to emit. In that event, the source's potential to emit is calculated after considering the effect of those controls. Otherwise, potential to emit is calculated without regard to any controls which may limit emissions from the source.

and could be covered under a general permit. Another way the OAQ can reduce the complexity of the permits it issues is to adopt a list of insignificant emissions units that do not need to be covered in the permit. Finally, if permits are written in a manner which allows emissions to be moved around within a production unit, there will be less need for modifications and the permit revision activity associated with it.

Given the foregoing, the OAQ will have a more manageable number of permits to write, and the staff increases will not be as great. We have assumed that there would be 300 permits to write over 3 years, which represents a conservative assumption that our estimate of the number of major sources is wrong by 50%. We also estimated that the average permit would take one man-month to write, and then assumed that it would take twice as long, so that a permit writer could not be responsible for more than six permits per year. We also estimated that there would be 20 significant Title V modifications each year that would take the same length of time to process as a full permit application. Using these assumptions, there will be a need for 20 permit writers during the first three years of the program (120 permits/modifications divided by six permits per permit writer per year).

In addition to the 20 permit writers, there would be a need for approximately 10 persons to perform compliance inspections solely for Title V major sources, for a total of 30 permit writers/inspectors. Five of these should be air monitoring specialists, and of the remaining 25 permit writers/inspectors at least five would be in senior or supervisory positions, and the staff would require the services of at least six secretaries. The services

of one lawyer, whether hired by the OAQ or provided by the Attorney General's Office, would be required.

The total costs of all the additional personnel, and other reasonably anticipated expenses, are set forth in the following chart. Although we believe it overestimates actual program costs, it is derived in part from OAQ cost estimates and therefore we believe that the figures are reasonable.

20 Technical positions @ $ 33,000/person:	$ 660,000
4 Technical positions @ $ 35,000/person:	$ 140,000
1 Administrative/Technical Asst. :	$ 40,000
6 Assistants (Secretarial) @ $ 18,000: $	$ 108,000
5 Air Monitoring Specialists @ $ 26,000	$ 130,000
1 Ambient Air Modeler	$ 40,000
1 Data Processor	$ 20,000
1 Attorney @ $ 40,000	$ 40,000
	Total: $ 1,178,000
• Fringe benefits @ 29%:	$ 341,620
• Computers and software	$ 50,000
• Laboratory expense	$ 60,000
• Office furnishings	$ 40,000
• Travel	$ 40,000
• Office Supplies	$ 15,000
• Training	$ 15,000
• Monitoring equipment	$ 75,000
• Additional office space	$ 120,000
	$ 756,220
	Total: $ 1,934,220

Thus, the Title V permit program can be operated on less than 2 million dollars, even if certain conservative assumptions are made about the program.

Having determined the cost of the Title V program the Commentors evaluated the number of tons of emissions on which fees would be assessed. The OAQ estimated that there would be approximately 300-360 permits issued in the first three years, based

largely on an inventory that it developed which contained about 300 sources which had sufficient potential to emit to qualify as major sources. The total emissions from these sources, which did not include utility emissions, was over 160,000 tons. (Phase II utility emissions represented an additional 58,000 tons.) As noted above, though, we believe that many of the sources on the OAQ's inventory will elect to become synthetic minor sources, and therefore will not be paying permit fees. Consequently, we have removed from the emissions inventory all sources whose actual emissions fell below the major source level. This allowed us to make a fair comparison between the number of permits expected to be issued and the tons of emissions from permitted facilities.

Almost one third of the sources on the OAQ inventory had actual emissions of 100 tons or less. Surprisingly, elimination of almost 100 of these potential minor sources only reduced the amount of emissions by only 7,000 tons. Therefore, we estimate the number of tons of emissions for purposes of fee payment is 211,000 (160,000 tons minus 7,000 tons from synthetic minors plus 58,000 tons from Phase II utilities).

The following diagram shows the predictable TPY for approximately 200 major sources and Phase II utilities.

All non-utility sources (TPY):		153,000
Phase II utilities (TPY):		58,000
	Total:	211,000

The Commentors have estimated that $1,934,220 is needed to fund OAQ's Title V permit program, and that emissions will total 211,000 tons. The result is a per ton fee of $9.16 to cover the costs of the permit program.

V. CONCLUSION

In the comments filed with the OAQ in July the Commentors suggested that a figure of $18 per ton, with a $2 per ton temporary fee, was the highest fee that could be justified based on our best estimates. Based on the foregoing analysis, we have changed our position and urge the Commission to adopt a base fee of $9.50 per ton.

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45CSR30
RESPONSE TO COMMENTS OF CNG TRANSMISSION CORPORATION
JUNE 29, 1993

1. CNG's comments regarding the definition of "Major source" states that for purposes of clarification, "Emissions from any pipeline compressor or pump station" should be revised to "Emissions from any pump stations or individual pipeline compressor".

OAQ would recommend that the subparagraph remain as written because the language is adopted directly from the federal rule.

2. CNG requests that the definition of "Potential to emit" be revised from "under its physical and operational design" to "under its physical and operational design at rated conditions. For reciprocating engines, rated conditions are full load and full speed." CNG states that the addition of this provision will clarify potential to emit.

OAQ believes that the suggestion should not be adopted by the APCC. "Rated conditions" are not applicable to all situations because the term pre-supposes that all equipment of like nature is in the same operating order. Potential to emit is an engineering judgement related to operational and design conditions. As such, OAQ recommends that the language remain as written.

3. CNG takes issue with the provisions of subsection 3.4, which states: "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."

The language as contained in the proposed rule is taken directly from 40CFR70.3(d). However, if OAQ and a source are both agreed that there is no protocol to quantify fugitive emissions from a source, then as a practical matter the emissions cannot be quantified. Even if it is agreed that acceptable emissions quantification methods are not available, emission control measures may be required. For example, an emission factor or other methodology may not exist to quantify fugitive emissions from certain fine material stockpiles, but a source may still be required to use dust suppression techniques to minimize fugitive dust entrainment. OAQ suggests that the language remain as written as consistent with the federal rule.

4. CNG recommends that the State expedite efforts to secure EPA approval of redesignation of non-attainment areas.

This general comment cannot be addressed with regard to the specific provisions of the proposed rule.

5. CNG makes a general comment regarding emissions standards. CNG is concerned that the introduction of brake horsepower specific or BTU-based standards would unnecessarily complicate compliance and enforcement efforts.

OAQ cannot address these comments at this time. Each standard must be addressed in light of current State standards, as well as, existing or future promulgations of federal standards. The proposed rule does not prescribe any particular emission standards.

6. CNG requests changes to subsection 5.1.c, which deals with monitoring and related recordkeeping and reporting requirements as contained in the permit. CNG recommends that specific provisions be included to allow the use of portable emissions analyzers. CNG urges the formal recognition of portable instruments as an acceptable analytical method.

OAQ has no problem with incorporating portable emissions analyzers into any permit agreement or any permit when such use is supported by applicable requirements. In general, the proposed rule is an administrative rule to address what may be appropriate procedures to issue a Title V operating permit. OAQ would caution against incorporating specific provisions that should or will be addressed by future rulemaking in light of any federal rule changes.

7. CNG expresses concerns that changes in emissions resulting from variation in operating conditions, excluding equipment modification or fuel switching, must be exempt from the provisions of subsection 5.8 regarding operational flexibility.

OAQ believes that such changes can be accommodated by writing appropriate operating conditions and scenarios into the initial permits based upon appropriate data and foresight by each affected company.

8. CNG expresses concern that the provisions of 5.8 regarding operational flexibility and 5.9 regarding off-permit changes disallow the applicability of a permit shield.

40CFR70.4(b) which cites the required elements of the initial program submittal to U. S. EPA contains the following provisions:

70.4(b)(12)(i)(B) states that a permit shield shall not apply to any change made pursuant to operational flexibility provisions.

70.4(b)(14)(iii) states that an off-permit change shall not qualify for the permit shield.

OAQ believes that the language must remain as written for federal program approval.

45CSR30
RESPONSE TO CAPITOL CEMENT CORPORATION
JULY 23, 1993 COMMENTS

1. Capitol Cement ("CC") expresses concern that the fees collected under the proposed regulation will be used for some unintended purpose.

Use of fees collected under the provisions of the Title V operating permit program is governed by the provisions W. Va. Code §16-20-5(a)(18)(E) which states, in pertinent part; "That the fees, penalties and interest collected for operating permits required by Section 14 of this Article shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program."

2. CC suggests that the Chief determine the amount of money that is required to run the operating permit program and justify the same to U. S. EPA even if the cost is below $25 per ton per year.

Response: See Chief's Fee Justification.

3. CC recommends that fees be shown in 1993 dollars so it is clear what fee level is being established.

The rule has been changed to agree with the comment.

4. CC comments that the fees of surrounding states need to be considered so that West Virginia businesses are not placed at a competitive disadvantage.

See Chief's Justification for Fees.

5. CC expresses concern regarding the proposed interim fee which is due in July, 1994. CC suggests that this fee not be allowed as EPA will probably not have approved the West Virginia regulations by that time.

OAQ believes that such a "ramp-up" fee is mandatory for implementation of the operating permit program. Not only must EPA approve the rule submitted by the APCC, EPA must also approve the implementation of the entire operating program. Part of the program demonstration is a showing that adequate resources will be in place to implement the program upon its approval. As such, OAQ recommends the approval of an interim fee to be effective on the effective date of the rule prior to the definition included in the proposed rule of "effective date of the operating permit program."

6. CC suggests that certain rules of the APCC are more strict than U. S. EPA requirements. CC suggests that these requirements and limitations be reviewed and certain exceptions noted in the proposed regulation so that the regulation is not stricter than that required by U. S. EPA.

OAQ is unable to respond to such a general statement. If CC has specific concerns regarding the stringency of rules promulgated by the Commission, CC should specifically bring those comments to the Commission. Regulation 30 does not per se impose any emission standards but only provides a mechanism for summarizing all federal and State rule requirements applicable to a facility.

7. CC expresses concern that the economic impact statement is not realistic. CC suggests that it will cost as much to submit applications and comply with the terms of the operating permit program as the total cost of the fees collected under the program. CC states that this amount of money cannot be considered a minimal impact.

The costs shown in the fiscal note reflect costs to affected businesses to pay fees at the proposed fee levels at program implementation. The fiscal note states that other unquantifiable costs for permit application preparation would be incurred by affected industry.

8. CC recommends that insignificant activities be listed.

OAQ agrees and has provided such a listing. See Response to WVMA Comments - Comment H.

9. CC states that some provisions need to be included in the rule to allow the Commission to adjust fees without a new submission to EPA.

Fees may be adjusted at any time through rule-making action of the Commission and subsequent endorsement of the Legislature. In addition, the Legislature may consider or reconsider any legislative rule at any time in the same manner as any other piece of legislation. In short, the fee may be adjusted through proper action. However, EPA provides approval or disapproval for the operating permit program under the terms of Title V. Changes in fees would not necessarily require a new submission to EPA, but if fees become too low then program approval by EPA can be revoked. EPA will require periodic fee adequacy assessment and an accounting of Title V program expenditures and needs can be made annually. Provisions have been added at 8.1.c to allow periodic adjustment.

10. CC states that 45CSR13 needs to be changed to coordinate with the proposed rule 45CSR30.

The Commission is currently considering changes to 45CSR13 which will coordinate the efforts of the two rules.

45CSR30
RESPONSE TO COMMENTS
FRED SAMPSON
July 5, 1993

1. Mr. Sampson requests that the transition period referred to in Subsection 1.1 be more fully explained.

OAQ agrees. The transition period is more fully outlined in Section 9.

2. Mr. Sampson states that the definition of affected source must cover incinerators. Mr. Sampson also suggests that the provisions under the definition of "major source" regarding calculations of fugitive emissions reduce the charging rate of municipal incinerators from 50 tons of refuse per day to 5 tons per day.

"Affected source" has a specific meaning under Title IV of the Clean Air Act. The acid rain provisions of the Clean Air Act fully outline those units affected. The OAQ recommends that the language remain as written.

OAQ has taken the charging rate of 50 tons per day from EPA guidance. As such, OAQ believes the language should remain as written.

3. Mr. Sampson requests deletion of a portion of the definition of "applicable requirement" which states: "Any emissions and related requirements established for the source by agreement with the Chief or otherwise;".

OAQ disagrees with Mr. Sampson's comments. Previous agreements regarding source emissions must be contained in Title V operating permits.

4. OAQ is unsure of Mr. Sampson's intent with regard to the definition of "emissions allowable under the permit". Mr. Sampson states that WV must be able to have more stringent standards than federal government due to the air inversions in our valleys.

The definition "Emissions allowable under the permit" means a permit term or conditions establishing an emissions limit. Such provisions, as more fully outlined in the definition, are federally enforceable. West Virginia is not limited to those conditions less stringent than the federal government. However, in situations where the APCC deviates from a federal standard by promulgating a rule more stringent than the established standard, a specific finding of fact must be made that such deviation is scientifically supportable given conditions unique to the state of WV. Such provisions are found in W. Va. Code §16-20-1, et seq.

5. Mr. Sampson suggests an addition to "Case-by-Case MACT". Mr. Sampson suggests that MACT be no less stringent than that required by USEPA standards.

OAQ agrees. In such cases where the Chief must make a MACT determination where a federal standard exists, the provisions of Subsection 12.2 indicates that such standards must be the equivalent of any applicable standard promulgated for such sources by USEPA. In all other instances, the Chief will be making a case-by-case MACT determination based upon the criteria listed in the definition.

6. Mr. Sampson requests that the last sentence of the definition of "Case-by-Case MACT" be revised to read: "MACT shall not be less stringent than the most stringent emissions that can be achieved by existing technology."

OAQ believes that such an addition to the MACT standard is inconsistent with the federal provisions regarding MACT. OAQ believes that the criteria for determining MACT is sufficient to meet the federal standard.

7. Mr. Sampson requests deletion of that portion of the definition of MACT which reads: "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 42USC7501) applicable to the source category and prevailing at the time, within a category or subcategory with 30 or more sources".

The language as revised is consistent with 42USC7412(d) which provides the definition of MACT. As such OAQ would recommend the language remain as written as consistent with the federal rule.

8. Mr. Sampson takes issue with that portion of the definition of major source which states, "Not withstanding the preceding sentence, emissions from any oil or gas exploration or production of oil (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." Mr. Sampson states that these facilities also need regulation.

Such facilities are regulated under applicable requirements. However, this definition deals with the aggregation of emissions from such sources for the purpose of determining what a major source is. This language was taken directly from the provisions of 40CFR70 and, as such, OAQ believes the provision should remain as written.

9. Mr. Sampson expresses concern with the definition of "Potential to emit". Mr. Sampson takes issue with the latter part of the following: "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."

To determine potential to emit, only those limitations deemed enforceable may limit the calculation. OAQ believes the language should remain as written.

10. Mr. Sampson takes issue with the definition of "Regulated pollutant (for fee calculation)". Mr. Sampson believes that the exceptions contained in paragraphs a, b, and c should be included (as opposed to excluded) from the definition.

The provisions of the definition with regard to the exceptions from regulated pollutants (for fee calculation) are taken from 40CFR70 which provides the federal requirements for state operating permit programs. As such, OAQ recommends that the language remain as written.

11. Mr. Sampson takes issue with the definition of "responsible official". In particular, Mr. Sampson requests deletion of that portion which states "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 as approved in advance by the Chief".

To effectively analyze the section, the entire last clause needs to be placed in context beginning with: "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". OAQ believes that the language, as taken from the federal rule, is adequate to determine a responsible official in such facilities. OAQ believes the language should remain as written.

12. Mr. Sampson takes issue with those provisions of Paragraph 3.2.a and suggests that the words "or solid waste incineration units" be deleted.

OAQ notes that the deletion of said clause would be improper as it would allow the Chief to defer such sources from the requirements of obtaining an operating permit. OAQ does not believe that such interpretation was requested by the commentor. As such, OAQ believes that the language should remain as written, and as consistent with the federal rule.

13. Mr. Sampson takes issue with Subparagraph 3.2.c.B which states; "All sources and source categories that would be required to obtain a permit solely because they are subject to 40CFR61, Subpart M (1984) - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation."

Such language is taken directly from 40CFR70 which provides the parameters for the Title V operating permit rule. Such sources are still subject to the standard as written, however, the source would not have to obtain a Title V operating permit. As such, OAQ believes that the language should remain as written.

14. Mr. Sampson takes issue with the provisions of Paragraph 4.3.g which states: "Additional information as determined to be necessary by the Chief to define emissions trading scenarios or alternative operating scenarios identified by the source pursuant to Paragraph 5.1.i., 5.1.j., or operational flexibility pursuant to Subsection 5.8."

Emissions trading scenarios must be underpinned by applicable requirements. Such trading scenarios are not currently defined by the Commission. This provision would allow the Commission to add such trading scenarios in its future acts the APCC deems important. The language was taken from the federal rule and, as such, OAQ recommends that the language be retained as written.

15. Mr. Sampson expresses concern with the provisions of 4.3.h.A.(b) which states: "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." Mr. Sampson believes that the compliance plan for sources and schedule for compliance by the source should not allow the source to meet new applicable requirements in a timely manner, but that such new requirements be expressly outlined by the new applicable requirement.

OAQ agrees. OAQ would urge that the APCC consider this comment in light of any new promulgated applicable requirements after the effective date of the operating permit program. However, the proposed rule should retain the language as written to allow flexible time-frames for compliance with new standards.

16. Mr. Sampson expresses concern with those provisions of 5.1.d which provide as part of the standard permit requirements that, "A permit condition prohibiting emissions exceeding any allowances that source lawfully holds under Subchapter IV Acid Deposition Control of the Clean Air Act or rule of the Commission promulgated thereunder."

The provision is a necessary part of the Title V operating permit program. Acid rain provisions are covered by subsequent federal rulemaking. Such rulemaking allows sources to emit in accordance with held allowances. As such, OAQ believes that the language should remain as written.

17. Although unclear, it appears that Mr. Sampson takes issue with the provisions of 5.1.d.A. and B. The provisions relate to allowances held by the sources governed by the provisions of Title IV Acid Deposition Control of the Clean Air Act.

Such provisions are necessary for the approval of the state operating permit program. These provisions will be subsequently proposed to the APCC for rulemaking in accordance with provisions of the federal rule (Effective, January 1993).

18. Mr. Sampson requests that all references to "trading allowances" be deleted from the rule.

The provisions of Paragraph 5.1.h are in accordance with the federal rule. However, emissions trading scenarios must be underpinned by applicable requirements as promulgated by the Commission and approved into the State Implementation Plan by USEPA.

19. Mr. Sampson expresses concern with the provisions of 5.1.j.B and C. Mr. Sampson states that these provisions weaken the proposed rule.

The provisions refer to the extensions of the permit shield to terms and conditions that allow the trading of emissions increases and decreases and that such trades shall meet all applicable requirements of the rule. As stated previously any

future rule promulgation regarding emissions tradings must be approved into the State Implementation Plan by USEPA.

20. Mr. Sampson requests the deletion of the phrase "and citizens" under the provisions of 5.2.a.

Such provisions are informational and inform the public of their ability to enforce the terms and conditions of the permit pursuant to the federal Clean Air Act. Such citizens suits are more fully outlined in the federal act. OAQ recommends that the language remain as written.

21. Mr. Sampson reiterates the deletion of emissions trading from the rule.

22. Mr. Sampson takes issue with the provisions of 6.1.a.A which states: "The Chief has received a complete application for a permit, permit modification, or permit renewal except that a complete application may not be received before issuance of a general permit under Subsection 5.4 of this rule". In particular, Mr. Sampson requests that in situations where general permits are issued OAQ may not require a complete application prior to the issuance of a general permit.

Mr. Sampson's comment is well taken. However, the issuance of a general permit is most likely in situations where there are large numbers of small sources governed by particular provisions under NSPS or NESHAPS. These facilities include area sources like dry cleaners. In essence, the provisions of a general permit would be issued and sources would agree to operate under the parameters of the permit. As such, OAQ believes that the language should remain as written.

23. Mr. Sampson requests changes to the provisions of 6.4 regarding "Administrative permit amendments". In particular, Mr. Sampson requests that the permits require public participation any time that ownership changes hands.

The provisions regarding administrative permit amendments are taken directly from the federal rule. As such, OAQ would recommend the language remain as written.

24. Mr. Sampson expresses concern with the provisions of 6.4.b.A which allow the Chief to make an administrative permit change without public notice.

Administrative permit amendments are, by definition, severely limited in character. The federal rule does not contemplate public participation in this particular aspect of the rule. OAQ recommends that the language remain as written.

25. Mr. Sampson requests that the permit shield provisions of Subsection 5.6 not be applicable to situations where sources desire to incorporate into the Title V operating permit terms of preconstruction permits.

Any administrative amendment to an operating permit as a result of preconstruction review must meet essentially the same requirements as those required in a significant modification in the Title V operating permit. This "enhanced" NSR review allows ample public participation and must, in fact, mirror

public participation under the terms of this proposed rule. As such, OAQ believes that the language should remain as written.

26. Mr. Sampson reiterates his position regarding "emissions trading".

27. Mr. Sampson requests a revision to the public participation provisions of Subsection 6.8. with regard to the timing of public notice of the preparation of a draft permit. Under 6.8.a.B.(a). Mr. Sampson states that the language which reads "Upon request of the permit applicant the public comment period may be extended for an additional thirty (30) days" to "Upon request of the public, the public comment period may be extended for an additional thirty (30) days.

Mr. Sampson's comment effectively excludes the permittee from getting additional time periods for public comment. In addition, Mr. Sampson's request appears to be addressed by the third sentence of that part which states: "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." OAQ believes the language should remain as written.

28. Mr. Sampson takes issue with the provisions of 9.1.f which states, "Attainment status of area in which the stationary source is located or other geographical factors". Mr. Sampson states that the term "attainment status" is not defined and is confusing.

Attainment status refers to whether or not a particular geographical area has maintained "National Ambient Air Quality Standards" for criteria air pollutants as contained and defined in the provisions of the Clean Air Act. Please note, additional information regarding attainment areas is contained under the definition of major source which refers to certain types of ozone, carbon monoxide, and particulate matter nonattainment areas. OAQ believes the language should remain as written.

29. Mr. Sampson expresses concern over some provisions of Section 11 of the proposed rule.

As noted in the responses to other comments received regarding this proposed rule, Section 11 will be deleted from this agency-proposed operating permit program.

STAFF RESPONSES TO
WEST VIRGINIA MANUFACTURERS ASSOCIATION COMMENTS
REGARDING 45CSR30
"Requirements for Operating Permits"

GENERAL COMMENTS:

Regarding the comments (General Comment A)work on the rule by the Office of Air Quality; (General Comment B) insignificant emissions units; (General Comment C) flexible operations; and (General Comment D) imposition of emissions limits, terms and conditions; such comments are all in the nature of a Statement of Philosophy regarding the approach to the implementation of the Title V operating permit program. These statements are covered more specifically under the "Specific Comments" section of the staff responses and will be so individually addressed.

SPECIFIC COMMENTS:

Comment A. Definition of Applicable Requirements.

WVMA suggest changes to the definition at paragraph 1 as follows:

"Any emissions caps and related requirements established for the source by agreement with the Chief ~~or otherwise~~ and EPA." Further, WVMA suggests changes to paragraph m WVMA suggests elimination of this section which includes the provisions of 45CSR4 regarding odors and 45CSR27 regarding toxic air pollutants from the applicable requirements lists.

RESPONSE: OAQ has no objection to rewording the provisions of paragraph 2.6.1. OAQ does, however, believe that the provisions of the operating permit program that are "State-enforceable only" be outlined in the provisions of paragraph m. Therefore, OAQ would suggest rewording the provisions of paragraph m to clearly state that the provisions of the two rules cited and any other State enforceable rules are State enforceable only.

Comment B. Definition and Application of "Maximum Achievable Control Technology."

In particular, WVMA suggests new language for the definition of MACT at subparagraph b.A. WVMA also suggests rewording the provisions of paragraph.

RESPONSE: OAQ agrees with rewording in paragraph b and that the paragraph be reworded. See agency approved rule.

"MACT requirements for existing listed sources 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:"

Regarding subparagraph A, OAQ agrees that the rewording as suggested by WVMA is clear and presents no substantive change suggests that the proposed revision be adopted and state as follows: "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 42USC7501) applicable to the source category and prevailing at the time.

WVMA takes issue with paragraph c, which states "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." WVMA states that such a standard introduces an element of subjectivity into the MACT determination process. However, in such circumstances where there is a case-by-case determination of MACT, the Chief does determine the standards and does determine what MACT is for a particular facility. The Chief has an obligation to follow the standards outlined in the definition and act in a manner that is not arbitrary or capricious. Therefore, we would suggest that the language remain as written.

WVMA suggests a rewrite of subsection 12.1 and a deletion and substitution for 12.2 and 12.3. The purpose of the suggested section changes is the clarification of when permit applications would be required from major sources of hazardous air pollutants subject to the case-by-case MACT standards. OAQ believes that applications for permits are adequately addressed under the provisions of subsection 4.1.a.E. OAQ agrees that subsection 12.1 could be rewritten to note that such case-by-case MACT standards shall only be applied to the relevant units of major sources. As previously stated, we believe the suggested rewrite of subsection 12.2 has been addressed in the provisions of subsection 4.1.a.E. With regard to WVMA suggested subsection 12.3., we believe that this would be adequately addressed by the addition of a subsection under the provisions of section 12. OAQ believes that the addition of a new 12.4. and a subsequent renumbering of the additional materials in section 12 would adequately address WVMA's suggestion. The new 12.4 would read "In determining case-by-case MACT standards the Chief shall grant reasonable compliance schedules for existing sources, as provided in 42USC7412(e)3, and shall not require an application for MACT under this subsection 4.1.a.E. where a source has met the early reduction requirement of 42USC7412(i)(5).

Comment C. Definition of "Major Source."

OAQ agrees that a definition of "Research and Development Facilities" is necessary for determining what is included as a major source. OAQ agrees with much of the definition suggested by the WVMA in so far as the research activities do not lend themselves to commercial production. As such we would suggest adoption and insertion of the definition as contained in the agency approved rule.

Comment D. Hazardous air pollutants as regulated air pollutants.

OAQ is in agreement that regulated pollutants (for fee calculation) do not include those hazardous air pollutants for which no standard has been promulgated or until a promulgation deadline is missed. It is clear to this office that toxic air pollutants regulated solely under 45CSR27 are subjected to "State-only" requirements and are not subject to the payment of fees under the operating permit rule.

Comment E. Definition of "Section 502(b)10 Changes."

WVMA requests clarification that changes which do not involve permit terms are not considered to be Section 502(b)10 changes. By definition, "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." Further, such changes are those that contravene express permit terms. Therefore, changes that do not involve permit terms are not considered section 502(b)10 changes.

Comment F. Sections 3.1.b and 11 - Conditioned Minor Sources.

WVMA expresses concern regarding the provisions of section 11 dealing with conditioned minor sources and its location in the operating permit rule. Although in principal WVMA agrees with the proposition that the Chief and a source should be allowed to enter into an agreement such that the source becomes a minor source, the comment suggests that the provisions concerning conditioned minor sources do not belong in the provisions of the operating permit program. OAQ agrees with the suggested deletion of section 11 regarding conditioned minor sources. However, in order for such agreements to be federally enforceable they need to be contained under the terms of another permitting rule. WVMA's suggestion that 45CSR13 which is currently under consideration by the Commission be modified to allow for a conditioned minor sources is well received and should be followed. Note: All references to conditioned minor sources are deleted from the agency-approved rule.

Comment G. Section 3.2 Permit Exemptions.

WVMA suggests an exemption for sources that are not major sources, affected sources, or solid waste incineration units from the obligation to obtain a permit for and indeterminate period. WVMA correctly points out that the federal rule does not put a five year limit on this exemption. There may not be substantive underpinning for these provisions in the Clean Air Act. As such, the deferral period has come under legal attack in a variety of jurisdictions. The proposed rule provides the Chief with a substantial amount of discretion regarding which minor sources may or may not be deferred. The section, as rewritten, provides a degree of flexibility to the Chief which is necessary to meet changing judicial circumstances and requires the Chief to be consistent with E.P.A. timetables.

Comment H. Section 3.2.d Insignificant Units.

OAQ agrees with the suggestion that insignificant units must be defined under the provisions of the operating permit rule. WVMA suggests many additions to a list of insignificant units. OAQ agrees with the following additions which have been adopted by the A.P.C.C.:

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.

Comment I. Section 3.3.a - Applicable Requirements.

WVMA suggests the insertion of the word "relevant" in paragraph 3.3.a. The paragraph would then read, "For major sources, the Chief shall include in the permit all applicable requirements for all relevant emissions units in the major source subject to this rule." OAQ believes that the addition of the phrase "other than insignificant emissions units" does not substantially change the intent of the rule.

Further, WVMA suggests changes such that units, for example, with multiple boilers would be subject to a single emissions limit. OAQ does not believe that provisions regarding this particular aspect of a Title V application should be included in this rule. If, for example, a single limit was placed upon multiple boilers, the limit would not be practically enforceable. In otherwords, such a limit would fail the test that operating permit provisions be practically enforceable. OAQ recommends that the language of 3.3.a should be only be changed to add the phrase "other than insignificant emissions units" and no further changes to this language are necessary.

Comment J. Section 3.5 - Termination of Permits.

WVMA suggests an addition of a subsection that would deal with situations where a permit under the Title V operating permit program will no longer be necessary. Provisions of agency approved 45CSR13 address this issue.

Comment K. Section 3.6 - "Issuance of Multiple Permits."

WVMA suggests the addition of subsections 3.6 and 3.7. The addition of the sections arises as a result of WVMA's position that it would be advantageous to have two or more permits for a source. OAQ believes that, in order for the public to effectively participate in the issuance of permits for major sources, the Title V operating permit must be a comprehensive document including not only the provisions of complex operations but also provisions regarding those operations that are more general in nature and would be covered by a general permit. OAQ believes that public knowledge will be enhanced by the ability of individuals or groups to review a comprehensive document as opposed to many diverse documents. Therefore, OAQ recommends no change to the proposed language.

Comment L. Section 4 - Application for Permits.

WVMA comments that the provisions of subparagraph 4.1.a.A be restated. OAQ agrees with the statement that applications according to the timelines outlined in subsection 4.1 are only applicable to those sources in existence on the effective date of the operating permit program. Therefore, subparagraph A should be changed to read, "Except as otherwise provided, applications for permits by sources which are in existence on the effective date of the operating permit program shall be submitted in accordance with the following schedule:"

WVMA also suggests changes to subparagraph 4.1.a.B. OAQ agrees with the general proposition that a source should be allowed to apply for a preconstruction permit and later apply for an operating permit within one year of beginning operations or, in the alternative, apply for a Title V operating permit at the same time a preconstruction permit is applied for, such that only one document addressing all applicable requirements is necessary. However, OAQ would recommend that the proposed language more definitely state that preconstruction review coupled with application for a Title V permit must meet both the provisions of the preconstruction review rule and the Title V operating permit rule. In particular, the Title V process must address affected State and EPA review, as well as, EPA veto. OAQ would recommend the insertion at the end of the first sentence of subparagraph B, "or the source may apply for a single permit in accordance with all applicable provisions and procedures of this rule and all preconstruction permitting rules".

Comment M. Section 4.1 - Duty to Apply for a Permit.

WVMA's comments regarding subsection 3.2 does not exempt minor sources automatically. However, minor sources may be deferred by the Chief on a specific source category basis consistent with E.P.A. deferrals. This provision requires an affirmative action on the part of the Chief. As been previously explained, the provision was necessitated as a result of judicial proceedings attacking the ability of U. S. EPA to defer minor sources as contrary to the provisions of the Clean Air Act. OAQ recommends that the subsection 4.1 remain as written.

Comment N. Section 4.1.a.E - MACT Modifications.

WVMA expresses concern regarding the proper time-frame in which a source subject to case-by-case MACT standards must apply for a Title V operating permit. OAQ would recommend that the provisions of subparagraph E be changed in part to the following, "within eighteen (18) months following the date established by U. S. EPA's failure . . ." These comments are made in conjunction with those comments under specific Comment B.

Comment O. Sections 4.1.b, 6.1.d and 6.2 - Completeness Determination.

WVMA expresses concern with the above mentioned provisions regarding the situation when additional information regarding a timely-filed permit is requested by the Chief after the deadline for a permit application has passed but before the application is deemed complete. OAQ agrees with the comment and includes language to affect the comment's intent at 4.1.b and 6.2.

Comment P. Section 4.3 - Standard Application Form.

OAQ agrees with the concept of exclusion of insignificant units and activities. WVMA suggests that changes be made to subsection 4.3. OAQ agrees and suggests the following: " which is not insignificant as defined in section 3.2.d, shall be included in the application, except that a list of insignificant activities must be included in the application.'"

In the same manner, WVMA suggests that subparagraph 4.3.c.A be changed from, that sentence which reads, "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" to "A permit application shall describe all emissions of regulated pollutants emitted from any emissions units, except where such units qualify as insignificant emissions units as defined in subsection 3.2.d of this rule or are exempted under subsection 3.1 of this rule"'.

WVMA also suggested the word "significant" should be added in subparagraph 4.3.c.G such that other information required would be the location of "significant" emissions units. As significant is an undefined term, OAQ suggests that the proposed language remain as written.

Comment Q. Section 4.3.d.C. - Permit List.

WVMA suggests a change to the language of subparagraph 4.3.d.C such that the operating permit application would include all permits or applications for new or modified sources "that are effective or pending and have been issued by, or

submitted to, the Commission, the Chief, or EPA." The language of the rule did not pick up the suggested language but did modify the section to address the clarification.

Comment R. Sections 4.3.g and 5.1.a.C - Permit Application Requirement.

WVMA suggests changes to paragraph g such that alternative equivalent emissions limits referenced in 5.1.a.C are included in the subject paragraph. OAQ has no objection to the inclusion of this language. Further, OAQ has no objection to the inclusion of the suggested language which would read, "Additional information as determined by the Chief to be necessary to define emissions trading scenarios pursuant to paragraph 5.1.j, alternative operating scenarios identified by the source pursuant to paragraph 5.1.i, operational flexibility pursuant to 5.8, and alternative equivalent emission limits pursuant to 5.1.a.C." WVMA's proposal adds clarity to the paragraph. OAQ agrees with the suggested change.

Comment S. Section 5.1.a.D - Distinguishing State and Federal Permit Requirements.

WVMA suggests that the operating permit rule include some provision which requires the Chief to differentiate between SIP conditions which are federally enforceable and those conditions enforceable only by the State. WVMA suggests the insertion of a new subparagraph 5.1.a.D which would state, "The Chief shall identify in the permit those terms and conditions which are enforceable by EPA." OAQ agrees with the concept that the "State's-only" requirements must be distinguished from federal requirements in the body of the permit. However, as the operating permit rule is a direct result of Title V of the Clean Air Act Amendments of 1990 and as EPA retains the power to veto such permits, it appears more reasonable that the Chief should identify those very limited terms and conditions which are State enforceable only.

Comment T. Section 5.1.c - Continuous Emissions Monitoring.

WVMA requests the addition of language regarding continuous monitoring requirements. WVMA proposes a suggested change to section 5.1.c.A.(c) so that it would read, "Continuous monitoring shall be imposed only where requested by the permittee or where it is the only option provided under and applicable requirement." In light of the fact that this rule is an administrative tool to track various requirements as promulgated by the Air Pollution Control Commission which would consider the requirements of federal programs and regulations in the promulgation of its rule, OAQ believes that it would be improper to severely limit the APCC's ability to require continuous emissions monitoring by this administrative rule. OAQ believes that continuous emissions monitoring must be addressed in future promulgations in light of ever-changing federal requirements.

Comment U. Section 5.1.c.C(b) - Definition of Prompt.

WVMA suggests that Part 5.1.c.C(b) which discusses the need for the Chief to define "prompt" is duplicative and is probably addressed in Part (c). WVMA suggests a change to that portion of Part (c) such that it would state "Reporting is prompt if it is done within the following time limits:". OAQ suggests rewording 5.1.c.C.(c) as contained in the agency approved rule. The provisions of part (b) address prompt reporting of deviations and were reformulated by the Commission.

Comment V. Section 5.1.d.C - Acid Rain Allowances.

WVMA suggests the addition of subparagraph 5.1.d.C to provide an equivalent provision to 40CFR70.6(a)(4)(iii). OAQ does not oppose the addition of subparagraph C which would read, "Any such allowance shall be accounted for according to the procedures established in rules promulgated under Title IV of the Clean Air Act."

Comment W. Section 5.1.f.E - Duty to Provide Information.

WVMA states that if a claim of confidentiality is made and the Chief requires information to be sent by the facility directly to EPA then "is the facility relieved from providing such information directly to the Chief". OAQ agrees that this provision should be clarified. OAQ would suggest rewording the last sentence of subparagraph E to state, "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."

Comment X. Section 5.1.h - Emissions Trading.

WVMA requests that the APCC adopt an emissions trading program at the earliest possible date so that intrasource emissions trading can be accomplished under paragraph 5.1.h. The wording of paragraph 5.1.h is derived from 40CFR70. OAQ believes that an emissions trading program must be incorporated into the SIP. WVMA urges the inclusion of such provisions in the proposed operating rule under Title V. In general, such provisions as contained in the operating permit program will not be included in the West Virginia State Implementation Plan. Further, as the proposed operating permit rule is an administrative provision, OAQ would caution against the inclusion of trading provisions directly into the rule. We believe that the APCC should, if circumstances warrant, consider a separate rule to be sent to U. S. EPA as emissions trading program. OAQ has been unable to devote the necessary resources to reviewing an emissions trading or banking program in light of the various other regulatory requirements and federal deadlines which have been imposed by provisions of the Clean Air Act. OAQ believes that the adoption of such a program by application of U. S. EPA's federal Emission Off-Set Interpretive Ruling and related guidelines is premature and must be considered in light of and together with all available related materials.

Comment Y. Section 5.1.i - Reasonably Anticipated Operating Scenarios.

WVMA comments that reasonably anticipated operating scenarios should include those situations where a production facility is capable of producing a variety of products using a variety of VOCs. WVMA recognizes the substitution of one VOC for another will result in a change in emission rates. WVMA suggests that the permittee be allowed to describe the various scenarios by describing the family of raw materials and the maximum emission rates foreseen. WVMA suggests the addition of subparagraph D to read, "May include categories of VOCs or other substances which can be substituted for one another in a production process." OAQ agrees with the proposition that there should be flexibility in describing reasonably anticipated operating scenarios. However, OAQ believes that the Chief must have the discretion to determine what VOCs can be substituted for other VOCs in the provisions of an operating permit. The reason for this discretion lies in the fact that VOCs vary in toxicity. Many VOCs are found on the list of 189 hazardous air pollutants as attached to the proposed rule. As such, OAQ would propose the following addition

in lieu of WVMA's proposal, "May include categories of VOCs in the Chief's judgement which can be substituted for one another in a production process."

Comment Z. Section 5.3.b.A - Inspection and Entry.

WVMA proposes that the words "at reasonable times" should be added after the word "permit" in subparagraph 5.3.b.A. The suggestion is well taken but, OAQ would suggest an alternative wording: "At all reasonable times (including all times in which the facility is in operation) to 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;".

Comment AA. Section 5.4 - General Permits.

WVMA suggests an addition to paragraph 5.4.a regarding general permits. WVMA suggests an addition to the last sentence of that paragraph, as follows: ". . . unless otherwise provided in regulations promulgated under that subchapter of the Clean Air Act." OAQ agrees with the spirit of the language, however, would suggest the following as being more consistent with the rulemaking authority of the APCC, ". . . unless otherwise provided in rules promulgated by the Commission in accordance with Title IV of the Clean Air Act."

WVMA also suggests an addition to paragraph 5.4.c of the proposed rule. WVMA correctly points out that the federal rule contains a variation of the following sentence, "Without repeating the public participation procedures required under subsection 6.8, the Chief may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review." OAQ agrees with this change consistent with the federal rule.

WVMA also suggests the addition to 5.4.d as follows: "A source may seek judicial review of a final action denying coverage under a general permit or a failure by the Chief to take final action within ninety (90) days of submission of the request for coverage." As proposed, paragraph d simply states, "The Chief shall act within ninety (90) days to approve or deny a request to be covered under a general permit." OAQ disagrees with the suggested change. The provisions of paragraph d require the Chief to act within ninety (90) days. Action on a general permit is a non-discretionary duty which is subject to a writ of mandamus to compel the non-discretionary action. Further the provisions of W. Va. Code section 16-20-1, et seq., provide the appeals process resulting from the denial of a permit. As such WVMA's suggested language is superfluous.

WVMA also comments that the provisions of subparagraph 5.4.e.A and the last sentence of 5.4.e.B regarding incorporation of general permits and new source specific permits should be deleted as duplicative obligations with no benefit gained. OAQ believes that there is significant benefit to consolidating all permits into one comprehensive Title V operating permit. OAQ believes that the piece meal approach to permitting does not adequately inform the public or the agency of the overall effect of its operations.

Comment BB. Section 5.5 - Temporary Sources.

WVMA urges the elimination of paragraphs 5.5.d and 5.5.e. The subsection involves 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. Paragraphs d and e require the locations and citing of such facilities in the permit and requires public notice to be given for each cite specified in the permit. OAQ agrees with the subsection as approved and rewritten by the A.P.C.C.

Comment CC. Section 5.6 - Permit Shield.

WVMA recommends that the word "subsection" be replaced with the word "rule" to be analogous to the federal rule. OAQ agrees with this change.

WVMA notes that 40CFR70.6(f)(3) contains two provisions not reflected in the proposed rule. WVMA notes that the State may wish to consider incorporating such provisions. The two paragraphs alluded to include a provision regarding emergency orders issued by the Administrator of U. S. EPA under section 303 of the Clean Air Act and the ability of U. S. EPA to obtain information from a source pursuant to section 114 of the Clean Air Act. OAQ agrees with the change and the language inserted at 5.6.c.C.

Comment DD. Section 5.7.c.D - Emergency Provisions.

WVMA comments that the federal rule setting forth the requirements of the operating permit program allows two working days in which to submit notice of emissions limits exceedances due to an emergency. The proposed rule allows only one working day for such a notice of emissions limits exceedances. WVMA urges tracking of the federal rule to allow two working days for such notice. Variance provisions are found in various rules of the Commission. Such provisions contemplate notice within one day of the exceedance. OAQ agrees with the language as adopted by the A.P.C.C. in the agency approved rule.

Comment EE. Section 5.8 - Operation Flexibility.

WVMA recommends that language be adopted to require the Chief to allow for operational flexibility as provided by the Clean Air Act. WVMA urges the substitution of the word "shall" for the word "may". As the Clean Air Act mandates the inclusion of 502(b)(10) changes, the Chief must allow operational flexibility that meet certain requirements. OAQ agrees with the changes as contained in 5.8.

The proposed regulations cites the preconstruction rules promulgated by the Commission in accordance with Title I of the Clean Air Act. As operational flexibility cannot include Title I modifications, OAQ recommends that the parenthetical be written to include 45CSR14 and 45CSR19.

WVMA correctly points out that subparagraph B of §5.8.c appears to have a typographical error. As such, the comma after the word "permit" in the second line of that subparagraph should be a period and the word "nothing" should begin the next sentence.

Comment FF. Section 5.9 - Off-Permit Changes.

WVMA suggests rewriting the provisions of subsection 5.9. WVMA suggests the following deletions from the language in the proposed rule:

(1) "And which is not considered to be construction nor modification under any rule promulgated by the Commission".

(2) The "not less than seven (7) days" provisions of paragraph b.

(3) "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."

WVMA suggests the following additions to 5.9:

(1) Opening paragraph, without obtaining "an amendment" or a modification of its permit.

(2) Paragraph b "The permittee must provide contemporaneous written notice of the change to the Chief and the EPA, except that no such notice shall be required for changes that qualify as insignificant under subsection _____.

OAQ recommends the addition of "administrative amendment" to the opening paragraph of 5.9. The provisions of 5.9.b have been changed to "within two (2) business days" as opposed to a seven (7) day advance notice. The provisions of paragraphs 5.9.e and 5.9.f have been substantially restructured to address expressed concerns.

Comment GG. Section 6.1.b - Time for Issuance of Permit.

WVMA expresses concern with paragraph 6.1.b. which reads, "Except as provided under the initial transition planned provided for under this rule, the Chief shall take final action on each complete permit application (including a request for permit modification or renewal) within eighteen (18) months after receiving a complete application.

WVMA suggests the following, "Except as provided under the initial plan provided under section 9 of this rule, the Chief shall take final action on each complete permit application (including an application for permit renewal) within twelve (12) months of receiving a complete application. The Chief shall take action on each significant permit modification within three (3) months of determining that a permit modification application is complete."

After reviewing these issues, OAQ recommends that the proposed rule be changed such that the Chief shall take final action on each complete permit application within twelve (12) months as per WVMA's suggestion. However, OAQ does not agree with WVMA's suggestion that OAQ take action on each significant permit modification within three (3) months of determining that a permit modification application is complete. OAQ recommends that the language be changed, however, such that significant permit modifications shall have final action within six (6) months of determining that a permit modification application is complete. OAQ believes that the three (3) month suggestion by WVMA is unrealistic in light of EPA and affected State participation as well as public participation.

Comment HH. Section 6.2 - Requirement to Have a Permit.

WVMA suggests certain changes to subsection 6.2. In essence, WVMA suggests three additions to subsection 6.2. Subparagraph 6.5.a.E concerns minor permit modification, and is an exception to operating in compliance with an effective permit issued under this rule. WVMA suggests the addition of subsections 5.8, 5.9, and as further contained in subsection 6.2.

OAQ does not oppose the addition of subsection 5.8 and those additional portions of subsection 6.2 as exceptions to the rule. However, OAQ does not believe the addition of subsection 5.9 regarding off-permit changes as appropriate under this subsection. Off-permit changes do not contravene express permit terms. Therefore, off-permit changes are in compliance with effective permits issued under this rule.

OAQ would suggest rewording the sentence to read, "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 a permit issued under this rule.

Comment II. Section 6.3 - Permit Renewal and Expiration.

WVMA suggests the addition of a new paragraph 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.

OAQ agrees that the above modification confirms that the permit shield continue in place until action is taken on the renewal application. As such, OAQ recommends the adoption of the suggested change.

Comment JJ. Section 6.4 - Administrative Permit Amendments.

WVMA recommends the addition of §6.4.a.F and 6.4.d. WVMA's suggested language is taken from 40CFR70.7(d)(vi) regarding administrative permit amendments.

(vi) Incorporates any other type of change which the Administrator has determined as part of the approved Part 70 program to be similar to those in paragraphs (d)(1)(i) - (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

The addition of paragraph d which states, "Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Clean Air Act." is acceptable to OAQ as consistent with the Part 70 federal regulation. However, subparagraph F which states, "Incorporates any other type of change which the Chief has determined to be similar to those in subparagraphs A-E of this paragraph." does not appear to be

consistent with the wording of the Part 70 federal regulation. The provisions of (vi) appears to endow the Administrator of U. S. EPA with the ability to include other types of changes in the approved Part 70 program as administrative changes. The language as suggested by WVMA appears to give the Chief cart blanche with respect to including any other provision that the Chief would identify as an administrative amendment. OAQ believes that this approach may be unacceptable to EPA and as such recommends that the suggested provisions of subparagraph F not be included in the proposed rule.

WVMA suggests a further change 6.4.b.A to allow thirty (30) days rather than sixty (60) days for final action on a request for an administrative permit amendment. Until the operating permit program is functional, no one can predict the number of administrative permit amendments that may be requested by permitted sources. As an administrative amendment does not generally involve the operations of a facility, a thirty (30) day time-frame for processing administrative amendments is unrealistic in every scenario. OAQ recommends that the language remain as stated.

Comment KK. Section 6.5.a - Minor Permit Modifications.

WVMA notes that the federal rule prohibits minor modifications for including any modifications under a provision required by Title I of the Clean Air Act, which involves preconstruction review. WVMA does not believe that all the changes under 45CSR13 qualify as Title I modifications and suggests that the language of subsection 6.5.a.E should be more generic. The suggested language is as follows: "E. Do not involve preconstruction review for modification under Title I of the Clean Air Act."

OAQ agrees with the change and would suggest: "Do not involve preconstruction review under Title I of the Clean Air Act or 45CSR14 and 45CSR19".

Comment LL. Section 6.5 - Permit Modification.

WVMA expresses concerns that revisions or modifications should only extent to the permit conditions being changed or modified, and should not reopen all aspects of the permit. Further, WVMA states that permit modifications for acid rain provisions are to be dealt with under separate rules. WVMA suggests the following:

OAQ agrees with the suggested changes regarding acid rain and does not oppose the addition of such to the proposed regulation as would be consistent with the federal rule.

Comment MM. Section 6.5.a - Minor Modification Criteria.

WVMA recommends the insertion of "for temporary sources" between the word "determination" and "of" to make the proposed rule correspond to the counterpart federal rule.

OAQ recommends the change to 6.5.a.A.(a)(C) to read: "Do not require or change a case-by-case determination of an emission limitation where other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis:"

WVMA urges a rewrite of 6.5.a.A.(a)(D) which would include the language, "And that the source has assumed avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I of the Act and an alternative emission limit approved pursuant regulations promulgated under 42USC7412(i)(5)."

The provisions of the federal rule regarding minor permit modifications are found in 40CSR70.7(e)(2)(i)(A)(4)(A) and (B) which states that minor permit modification procedures may be used only for those permit modifications that "Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include: (A) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and

(B) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act".

OAQ agrees that such language is contained in the Clean Air Act and would recommend the adoption of such additional language as suggested by WVMA with the inclusion of "but are not limited to" such that the language would be as adopted by the APCC at 6.5.a.D.

Comment NN. Section 6.5.a.E. - Changes to Minor Modifications.

WVMA states that there is no reason for a seven-day waiting period as provided in the proposed rule with regard to minor permit modifications. WVMA is correct in its assertion that 40CFR70.7(e)(2)(v) of the federal rule provides that "the State program may allow the source to make the change proposed in its minor permit modification application immediately after it files such application."

OAQ asserts that ability to make an immediate change is not required as part of this operating permit program. Although a State program may allow the source to make the change proposed in its minor permit modification application immediately after it files such application, OAQ believes that the more prudent and correct action would be that minor permit modifications be examined prior to the source making the change. OAQ recommends that the first sentence of 6.5.a.E should remain as written.

WVMA expresses concern that failure to comply with minor modification terms and conditions may result in the enforcement of both the newly modified permit provisions and the premodification permit provisions against the source. Although OAQ does note that these provisions are contrary to due process as stated by WVMA, OAQ believes that if a source undertakes a minor permit modification which contravenes express permit terms and thereafter also violates the terms of its proposed modification, then both sets of violations would be relevant in determining the severity of any possible penalty. Violations of proposed minor permit modifications, even when such a minor permit modification attempt is unlawful, is relevant to the prosecution of a case. OAQ agrees, however, that the matter should be considered as a violation. Therefore, OAQ would suggest a rewrite to the following: "However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it and the violation of the proposed terms

and conditions is relevant in considering any sanction."

Comment OO. Section 6.5.b - Significant Modification Procedures.

WVMA suggests changes to significant modification procedures as contained in subsection 6.5.b. WVMA expresses concern with the portion of subparagraph A which states, "A modification shall be considered if, in the judgement of the Chief, action on an application for modification would require decisions to be made on significant or complex issues or issues that generate or are likely to generate significant material adverse comment from the public, affected States, or EPA." WVMA suggests that this language is to broad because it allows public interest rather than impact on the environment to determine significance.

OAQ believes that it is important to be aware of situations that are likely to produce significant material adverse comment from the public, affected States, or EPA. OAQ believes that the Chief's discretion to determine a modification to be significant is important to the process of public participation. OAQ does not oppose the A.P.C.C. rewrite of 6.5.b.A as contained in the agency approved rule.

WVMA further suggests a rewrite to more fully outline significant modification procedures. Basically, WVMA states the inverse of minor modification procedures under 6.5.a to be significant modification procedures. OAQ agrees with such a change.

Comment PP. Section 6.6.d - Notice of Permit Reopening.

WVMA suggests that permit reopenings under subsection 6.6 be accomplished only after the Chief provides at least thirty (30) days notice to the source.

The provisions of paragraph c state "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." As such, the proposed rule as written provides thirty (30) days notice.

WVMA also expresses a recommendation that the provisions of paragraph c include a statement of the terms and conditions that the Chief proposes to change, the provision of information, and the ability of the Chief to waive some or all of the public comment procedures in certain circumstances. WVMA also suggests the addition of paragraph d that would subject the determination to reopen a permit and the revised permit terms to administrative and judicial review. WVMA suggests the addition of paragraph e to continue the permit shield pending issuance of a revised permit.

OAQ agrees with the general proposition that the notice to reopen should include a statement as to the reason why the permit is being opened. OAQ does not agree that public comment procedures can be curtailed by the Chief if the reopening involves no issues that were not addressed during the initial comment period. Further, OAQ does not agree that the determination to reopen a permit is subject to judicial review until such time as administrative review is exhausted. The issuance of the permit, however, in accordance with paragraph b follows the same procedures as apply to initial permit issuance. As such, the source has adequate

opportunity to appeal.

WVMA expresses concern that while reopening proceeding is pending the source be entitled to the continued protection of any permit shield. While in principal, OAQ does not oppose such language. OAQ believes that the language as written is over-broad as the term "pending". As such, OAQ would not oppose language that would provide continued protection of a permit shield until such time as the permit is issued.

OAQ would recommend the addition of a sentence to paragraph c to state "such notice shall include a statement as to the reason for the reopening of the permit." Further, "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 on the basis of a finding that such suspension is necessary to implement applicable requirements."

Comment QQ. Section 6.8 - Public Participation.

WVMA expresses concern that the provisions of subsection 6.8 regarding public participation need clarification. WVMA comments that if all the people require to be contacted by the provisions of 6.8.a.C are not notified then the issuance of the permit may be held invalid. The people entitled to receive notice under the provisions of 6.8.a.C are the applicant, any other State or federal agency which the Chief knows has issued or is required to issue a permit for the same facility, federal, State and inter-state agencies with jurisdiction over public health and the environment, the State Historic Preservation Unit of the Department of Culture and History, and other appropriate government authorities, including the federal land manager; persons on a mailing list, including those who request in writing to be on the list, persons solicited for area lists, or any unit of local government having jurisdiction over the area where the facility is proposed.

WVMA suggests the following language for subparagraph 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 some parts of 6.8.a.C.(a)(C) and 6.8.a.C.(b), shall not be a cause for denial or delay of permit issuance, or for repeating the public comment period."

OAQ agrees that the public participation aspect of the permitting process is extremely important. Many people and many agencies must be contacted by OAQ prior to the issuance of a permit and as the numbers increase so does the likelihood that occasionally some agency or individual will not be contacted. WVMA's suggestion includes notification of federal, State, and inter-state agencies with jurisdiction over the public health and the environment, the State Historic Preservation Unit of the Department of Culture and History, and other appropriate government authorities including the federal land manager when federal Class I areas are affected and by the Chief publishing a notice as a Class I legal advertisement in a newspaper in general circulation for the county where the emission will occur.

OAQ believes that the methods outlined by the proposed subparagraph are adequate to ensure public participation as long as the Chief endeavors to inform all of the parties listed under this section regarding public participation. As such, OAQ recommends the adoption of the suggested language.

Comment RR. Section 6.8.a - Contents of Public Notice.

WVMA suggests that the Title V operating permit rule address situations where the public participation procedures outlined in 45CSR13, 45CSR14, and 45CSR19 occur.

Although OAQ agrees in principal with the suggestion of WVMA, the public notice requirements of 45CSR13, 45CSR14 and 45CSR19 are contained in the respective rules. As such, additional requirements for those rules are properly set out in each rule. Nothing prohibits such a public notice. The public notice must meet the requirements of the respective rule and 45CSR30 to be effective under any enhanced new source review provisions.

Comment SS. Section 6.8.a.D - Contents of Public Notice.

WVMA expresses concern that the information required by 6.8.a.D(a)(F) is too excessive. The provision, regarding the contents of a public notice, states:

"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 a description of the permit area which specifically designates such emission point."

While it is OAQ's intent to provide an adequate public notice, OAQ realizes that too much material in a public notice may numb the public to its contents. WVMA's point is well taken that a party can obtain such information from the Office of Air Quality upon request. Therefore, OAQ recommends deletion of the provision.

Comment TT. Section 6.8.b - Requests for Public Hearing.

WVMA requests that public hearings only be held if the Chief believes it is necessary under the provisions of 6.8.c. WVMA suggests the following be added to the provisions of 6.8.b: "All comments shall be considered in making the final decision and shall be answered as provided in paragraph 6.8.c ", and 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."

The provisions of 6.8.c state that "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 (permits). 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."

OAQ believes that it is clearly the intent of the section to allow the Chief to retain discretion on whether a public hearing will be held and as such provided appropriate criteria in paragraph c. As such, OAQ believes that the additional language only clarifies a point and is not a substantive change. OAQ would recommend the adoption of consistent language.

Comment UU. Section 6.8.d - Reopening of the Public Comment Period.

WVMA expresses concern that the Chief would be required to reopen the comment period if a revised fact sheet is prepared. WVMA suggests that such a reopening need not be automatic, but should be resolved by the Chief on a case-by-

case basis under the provisions of 6.8.d.A.(c).

OAQ believes that as long as the Chief maintains the discretion to reopen the comment period under the provisions of 6.8.d.A.(c) then the spirit of the provisions are preserved. As such OAQ would not oppose the suggested change to delete under subpart (b) "and reopen the comment period under this section".

Comment VV. Section 6.10 - Review of the Chief's Actions.

WVMA suggests the inclusion of an administrative appeals provision. OAQ believes that administrative appeals are adequately covered by current Code provisions including W. Va. Code § 16-20-16.

Comment WW. Section 8 - Fees.

See Chief's fee response.

Comment XX. Section 8.4 - Consumer Price Index Riser.

WVMA expresses concern with the Consumer Price Index riser as set forth in paragraph 8.1.b. WVMA cites conversations with officials from EPA Region III in stating that the proposed rule does not apply the CPI in the manner intended by EPA. WVMA takes issue with applying the CPI to 1989.

42USC7661a(b) states the following:

> "The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable cost authorized by subparagraph (A)) in each year beginning after 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 twelve-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."

OAQ has no objection to the agency approved rule adoption of 1993 as the CPI riser base year.

Comment YY. Section 8.10 - Accounting for Title V Fees.

WVMA expresses concern that the entities paying the Title V fees be aware of how such funds are spent. WVMA suggests the following:

8.10. Beginning 1995 the Chief shall, on or before August 31 of each year, prepare an accounting to the Commission of all Title V fees received in the previous year and the manner in which they were used to fund the Title V operating

permit program.

OAQ is in agreement that all Title V fees be accounted for in a report to the Commission. However, OAQ would suggest a modification to the proposed revision which would insert the date of October 1 as the time-frame for submitting such a report. The reason for this request is to provide adequate time and to devote adequate resources to this complex accounting chore. In addition, the months of July and August are particularly hectic with the advent of rule-making season.

Comment ZZ. Section 9 - Transition Plan.

WVMA correctly points out that section 9 does not state the length of the transition plan. OAQ is in agreement that section 9 be changed in accordance with the Office's obligation to issue the first round of permits within three (3) years of the approval date of the operating permit program period.

WVMA suggests an addition to subsection 9.1 such that the lead in would state "For all permit applications which must be submitted within one (1) year of approval of this rule by EPA,". Further, WVMA proposes an additional subsection:

9.3. With regard to all permit applications received within one (1) year of the effective date of the permit program, the Chief shall issue permits to at least one-third of such applicants within one (1) year of the effective date of the permit program, to at least an additional one-third of the applicants in the year that follows, and all remaining permit applications in the third year.

OAQ has no objection to the addition of 9.3. In particular, OAQ recognizes the need for language to provide for a three year transition plan.

RESPONSE TO JULY 6, 1993 INFORMAL COMMENTS BY EPA

I. **40CFR70.2 "Applicable requirements" means all of the following as they apply to emissions units of a part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates): [LISTED]**

Regulations promulgated by U.S.EPA whether they have a current effective date or a future effective date must be adopted by the Air Pollution Control Commission prior to being State enforceable. However, such U.S.EPA promulgated regulations would be federally enforceable on the effective date of the rule. Considering U.S.EPA's power to veto a permit that does not include all federal requirements and considering the Chief's authority under 13.6 of 45CSR30 to "incorporate any provision into a permit which has been proposed by or agreed to by a permit applicant which does not conflict with any applicable requirement, " we believe that sources will agree to submit to promulgated U.S.EPA rules with future-effective compliance dates.

As the proposed rule is a State-promulgated rule and as our rules are promulgated by our legislature, our agency cannot automatically adopt provisions issued by U.S.EPA but must proceed through mandatory rulemaking. We cannot automatically make a rule State enforceable by U.S.EPA action. The rule only becomes State enforceable rule by proper State promulgation.

II. **2.5 70.2 Should define "Title V source" (a source required to obtain a Title V operating permit)**

Such a definition has been incorporated into 45CSR30.

III. **2.5.a 70.2 Must include language ". . . approved <u>or promulgated</u> by U.S.EPA . . ."**

40CFR70 "Applicable requirement" is defined in paragraph (1) to include "Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter."

The U.S.EPA comment is directed at the omission of the phrase "promulgated by EPA." The entire sentence is directed toward the State implementation plan which is approved by U.S.EPA. OAQ has no objection to the inclusion of this language.

IV. **2.5.j 70.2 Part 70 gives the Administrator the authority to exempt title VI requirements. The commission may not make determinations which would relax the stringency of a decision made by the Administrator.**

Under 40CFR70 "Applicable requirements," paragraph (11) states, "Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit."

While 40CFR70 gives the Administrator of U.S.EPA the authority to exempt certain standards or requirements of title VI from title V, the Air Pollution Control Commission is the rule making body regarding air quality in West Virginia. The Commission cannot vacate this authority in favor of U.S.EPA, but must act in an independent fashion. Language has been inserted to make the provision consistent with the Commission's rulemaking power in conformance with federal requirements.

V. **2.5 70.2 No mention of requirements to control air pollution from outer continental shelf sources, under section 328 of the Act.**

West Virginia, as a land bound state, has no need to control air pollution from outer continental shelf sources.

VI. **2.5.1 70.2 For purposes of clarification, it would be preferable to reference Section 5.8 of the rule as it pertains to operational flexibility and the program.**

45CSR30.2.5.1 states that an "Applicable requirement" (for inclusion in a permit) includes "any emissions cap and related requirements established for the source by agreement with the Chief or otherwise." The suggestion by U.S.EPA would limit such emissions caps to those contained under the "operational flexibility" provisions of 5.8. Other emissions caps by agreement with a source would be prohibited by this limitation. The proposed language should remain as written.

VII. **2.8 Definition is o.k. but the rest of the rule should utilize the 42 U.S.C. xxxx format.**

For the most part 45CSR30 uses the United States Code format as opposed to the specific section numbers of the Clean Air Act. OAQ proposes the standard use of the Clean Air Act section numbers as opposed to United States Code cites. For example, the definition of "502(b)(10) change" fits this style. The rule was revised to utilize the Clean Air Act format because people familiar with the history of the rule would be more likely to immediately understand this term.

VIII. **2.11 The term "discharge" should be defined.**

The definition of the term "construction" refers to "discharges." If the term "discharge" is utilized, it should be defined. The term has been changed to "emission" to comport with other definitions under the rule.

IX. **2.17 70.2 Need to define "air pollutant". (Is it related to term "air pollution" described in section 2.4) It also needs to be made more clear if West Virginia is planning to expand the scope of its operating permit program to include pollutants other than Regulated Air Pollutants.**

The definition of "emissions unit" refers to "air pollutant." As the operating permit program refers to "regulated pollutant," the reference in the definition of "emissions unit" should be changed to "regulated air pollutant" to be consistent.

X. **2.23 This definition may have to be revised to clarify that all MACT standards are not determined by the chief and are not determined on a case-by-case basis as will be done by the state pursuant to section 112(g) and 112(j). Other MACT standards such as those to be promulgated by U.S.EPA in accordance with the schedule developed under 112(e) must also be included in the operating permit whether the state intends to accept delegation to implement the federal standards or develop and submit its own air toxics program under section 112(l).**

The comment is well taken. To avoid confusion, the definition should be changed to "Case-by-case maximum achievable control technology" or "Case-by-case MACT".

XI. **2.23.a Reference to "listed sources" is unclear.**

2.23.b Reference to "listed sources" is unclear.

"Listed sources" refers to the provisions of subsection 13.1 which cites 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).

Added sentence at end of first sentence of "MACT" definition so the definition will apply to categories of sources under 12.1, 12.2, and 12.3.

XII. **2.24.a.A 7.2 Need to address future changes to the list. (i.e. lesser quantities established by rule by the Administrator, updates to Table 45-30A etc.)**

Future changes to the list of hazardous air pollutants or rules regulating lesser quantities of such will need to be addressed through rule-making.

XIII. **2.24.b 7.2 The Administrator has the authority to establish by rule major sources of fugitive emissions of a pollutant. Any such ruling the commission makes must be consistent with that ruling or not relax the stringency of it.**

Any rules establishing major sources of fugitive emissions promulgated by U.S.EPA must be enacted through State rulemaking.

XIV. **2.31.d see comment 2.24.a.A**

This comment regarding Class I or Class II substances states that the rule needs to address future changes to the list. (i.e. lesser quantities established by rule by the Administrator, updates to Table 45-30B, etc.)

Future change to the list of Class I and Class II substances or rules regulating lesser quantities of such air pollutants will need to be addressed through rulemaking.

XV. **3.2.a 70.3(b) The Administrator will complete a rulemaking to determine how the program should be structured for nonmajor sources. Any deferral the chief makes from the obligation to obtain a Title V operating permit for these sources must be consistent with the Administrator's future rulemaking.**

In the realization that the optional deferral as promulgated by 40CFR70 has been attacked by various groups as inconsistent with the Clean Air Act Amendments of 1990, the provision as written allows the chief the flexibility to respond to judicial events. Language added to make deferral consistent with U.S.EPA timetables.

XVI. **3.2.b Clarify inconsistent language "exempt" and "deferred"**

The provisions of 3.2.b have been changed from "exempt" to "deferred."

XVII. **4.1.a.A.(e) Term "emission point" should be defined.**

"Emission point" is defined in the agency-approved rule.

XVIII. **4.1.b Language "certain permit modifications in subsection 6.5 of this rule" should be clarified (i.e. ". . . permit modifications in 6.5(a) of this rule pertaining to minor modifications" . . .)**

Suggested change to "except in the case of minor permit modifications made pursuant to 6.5.a of this rule."

XIX. **4.3.h.C 70.5(c)(8)(v) Must have some commitment that when Title IV regulations come out, they will supersede schedules and methods of compliance the source will use to achieve compliance with the acid rain emission limitations.**

40CFR70.5(c)(8)(v) provides for a standard application form and required information including a compliance plan that contains the following:

"(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations."

Change to (end of sentence) ", except as specifically superseded by rules promulgated by the Commission with regard to subchapter IV of the Acid Deposition Control portion of the Clean Air Act."

XX. **5.1 See comment I**

Comment I states that "it must be made clear that EPA promulgated standards with future-effective compliance dates are applicable requirements."

See response to Comment I.

XXI. **5.1.a.C 70.6(a)(1)(iii) Part 70 provides for alternative emission limits to be made if the applicable implementation plan allows. Since the SIP is a subset of the term "applicable requirement", it may not be acceptable to use this language as written in this section. (EPA is reviewing further.)**

40CFR70.6(a)(1)(iii) provides for standard permit requirements including certain elements. One such element is emissions limitations and standards. In particular, the provision states: "(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such 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"

Recommendation: Change language from "applicable requirements" to "rules promulgated by the Commission pursuant to provisions of subchapter I of the Clean Air Act and which are contained in the state implementation plan for West Virginia."

XXII. **5.1 70.6(a)(4)(iii) Allowances must be accounted for according to the procedures established in regulations under Title IV of the Act.**

Pursuant to 40CFR70.6(a)(4)(iii) permits must contain "a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder." Specifically (iii) states, "Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Act."

Recommendation: Add language, "Any such allowance shall be accounted for according to the procedures established under Title IV of the Clean Air Act."

XXIII. **5.2.b 70.6(b) It is unclear as to what procedures must be followed for permit issuance, revisions and reopenings with respect to state-only requirements.**

45CSR30.5.2.b states, in part, "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 issuance, revisions, and reopenings with respect to state-only requirements are covered by section six of the rule. Section seven, referenced above, contain provisions regarding review by EPA and affected states.

Recommendation: Add language to state "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."

XXIV. **5.3 70.6(c)(5)(v) Additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act must be included in permits.**

40CFR70.6(c)(5)(v) requires permit content to include compliance requirements including "(v) such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act."

§114(a)(3) is, as follows:

> The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this chapter. The Administrator shall promulgate rules to provide guidance and to implement this

paragraph within 2 years after the enactment of the Clean Air Act Amendments of 1990.

§504(b) is, as follows:

> 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 subchapter IV-A of this chapter, or where required elsewhere in this chapter.

Both of these provisions refer to rules that the Administrator of U.S.EPA may develop with regard to monitoring requirements. The Commission cannot adopt rules in futuro. However, when such monitoring requirements become effective at the State level by proper procedures then such provisions can be inserted into the operating permit upon issuance, renewal, or reopening as may be applicable.

XXV. **5.4.a 70.6(d) Should reference public participation procedures provided in section 6.8 of this rule.**

Recommendation: Change 5.4.a to "The Chief may, after notice and opportunity for public participation, as contained in section six of this rule,".

XXVI. **5.4.e The term "individual permit application" should be defined.**

5.4.e.A This section is unclear. The term "source-specific" permit should be defined.

Recommendation: Define "source-specific" permit and replace individual permit application.

XXVII. **5.6 70.6(f)(3)(i) 70.6(f)(3)(iv) These part 70 provisions should be addressed.**

40CFR70.6(f)(3)(i) and (iv) address permit shields. These particular provisions state that nothing in any part 70 permit shall alter or affect:

"(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act."

Section 303 of the Clean Air Act contains provisions to allow the Administrator of U.S.EPA to bring suit on behalf of the United States in federal court to restrain any person from imminently endangering the public health or welfare, or the environment. In addition, the Administrator may issue orders to protect public health or welfare or the environment.

Section 114 of the Clean Air Act imbues the Administrator of U.S.EPA with authority to require certain information from any source.

Recommendation: Although it seems patently clear that a permit shield provision of an operating permit would not override provisions of an Act of Congress, a note is added to this section for clarification.

XXVIII. **5.8.b 70.4(b)(12) Comment for section 5.1.a.C is applicable.**

Recommendation: Change in accordance with comments and 5.1.a.C.

XXIX. **5.9.e 70.4(b)(15) Part 70 provisions state that "off-permit" changes may not be made for any changes subject to title IV requirements. Language must be changed to clarify that such changes will not be made without a permit revision.**

Recommendation: Change language from "prohibited" to "subject". In essence, no off permit-changes to subchapter IV sources.

XXX. **6.1.b 70.7(a)(2) There is no exception for different permit processing time requirements as may be defined in title IV regulations.**

Recommendation: Change by adding "and as may be further modified by the Commission pursuant to rules promulgated pursuant to subchapter IV of the Clean Air Act."

XXXI. **6.1.e 70.7(a)(5) For purposes of clarification, the following is a suggested change to the draft language: "Following receipt . . . public comment. In accordance with subsection 6.9 the chief shall . . ."**

Recommendation: The suggested change makes the provisions of the regulation clearer with no substantive change.

XXXII. **6.4.b 70.7(d)(1)(vi) 70.7(d)(2) These part 70 provisions should be addressed.**

40CFR70.7(d) addressed "administrative permit amendments," which "(vi) Incorporates any other type of change which the Administrator has determined as part of the approved part 70 program to be similar to those in paragraphs (d)(1)(i) through (iv) of this section"

Comments: These types of changes need to be addressed through rulemaking if and when the U.S.EPA Administrator varies the requirements of this section.

40CFR70.7(d)(2) states that "Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act."

Recommendation: Add a clarifying statement regarding the fact that Acid Rain permits shall not be subject to administrative amendments.

XXXIII. **6.5 70.7(e) This part 70 provision should be addressed.**

We believe this comment is directed toward that part of (e) which states: "A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Act."

Recommended change: Add sentence, "Permit modifications for purposes of the acid deposition control portion of the permit shall be governed by such further regulations as may be promulgated by the Commission."

XXXIV. **6.5.a.A.(a)(E) It should be made clear that modifications under any provisions of Title I of the Act do not qualify for minor source modification procedures. (In addition to existing language)**

Add language: "Do not involve preconstruction review under Title I of the Clean Air Act or 45CSR14 and 45CSR19."

XXXV. **6.5.a.A.(b) 70.7(e)(2)(i)(B) Comment for section 5.1.a.C is applicable.**

45CSR30.6.5.a.A.(b) states: "Notwithstanding part 6.5.a.A.(a), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the regulations of the Commission, or which may be otherwise provided for in the Title V operating permit issued under this rule."

Change: "provided for in the regulations of the Commission" to "approved by USEPA as part of the State Implementation Plan under the Clean Air Act."

XXXVI. **6.5.a.E 70.7(e)(2)(v) Language " . . .6.5.a.D.(a) through (d)" should be changed to "6.5.a.D(a) through (c)".**

The proposed language is consistent with 40CFR70 and should be adopted. (d) involves revising the permit and should not be included to allow the source to not comply with both sets of requirements.

XXXVII. **6.6.a.C 70.7(f)(1)(iii) Language should be changed: "The chief or USEPA determines . . ."**

See Comment XXXVIII for explanation.

XXXVIII. **6.6.a.D See comment 6.6.a.C**

Paragraph 6.6.a provides for the circumstances under which an operating permit will be reopened. Subparagraph 6.6.a.C states that the permit will be reopened if: "The Chief determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit." Subparagraph 6.6.a.D states that the permit will be reopened if: "The Chief determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements." Language has been inserted into the agency-approved rule. Sources must be informed that USEPA is vested with reopening powers regarding Title V operating permits.

XXXIX. **8 70.9 The term "actual emissions" should be defined.**

A definition is inserted into the agency-approved rule.

XL. **9.1 70.4(b)(11) This section does not satisfy requirements for the transition plan in 70.4(b)(11)**

40CFR70.4(b)(11) requires the operating permit program to have "A transition plan providing a schedule for submittal and final action on initial permit applications for all part 70 sources. This plan shall provide that:

(i) Submittal of permit applications by all part 70 sources (including any sources subject to a partial or interim program) shall occur within 1 year after the effective date of the permit program;

(ii) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date:

(iii) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 9 months of receipt of the complete application; and

(iv) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and the regulations promulgated thereunder."

Response:

(i) appears to have been addressed in 4.1.a.

(ii) needs to be addressed in section 9. Suggestion: Add 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."

(iii) and (iv) There does not appear to be any major problem with adding a variation of these sections.

45CSR30
RESPONSE TO COMMENTS APPALACHIAN POWER COMPANY
JULY 19, 1993

1. APCO suggests that the term "research and development facility" be defined in the rule.

OAQ agrees with the suggestion and has inserted a definition of research and development facility into the revised proposal.

2. APCO that regulated pollutants (for fee calculation) should exclude total suspended particulates but include PM_{10}.

OAQ recommends that, as all current and historic data, as well as the rules of the Commission, use total particulate and not PM_{10} as the standard, total particulate is better suited for protecting the National Ambient Air Quality Standards.

3. APCO suggest the addition of a section to include insignificant sources.

OAQ also recommends the adoption of a definition of insignificant sources. See Response to Manufacturers Comments, Comment H.

4. APCO expresses concerns with the provisions of 4.1.c, "Confidential Information. In the case where a source has submitted information to the State under a claim of confidentiality pursuant to W. Va. Code §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."

OAQ is unsure as to the nature of the commentor's comments. The section does not deal with the direct submission by OAQ of designated confidential material. The section only deals with circumstances where the Chief cannot forward information to U. S. EPA as a result of the source's claim of confidentiality.

5. Regarding Paragraph 5.1.c, APCO suggests that a section be added to allow, but not require, maintaining plot plans and schematics of emissions points with the permit and emissions inventories in lieu of a narrative.

OAQ is unsure of the nature of APCO's comment. However, OAQ believes that APCO was referring to the provisions of 4.3.c regarding emissions-related information. Sub-paragraph B states that "Identification and description of all points of emissions described in Sub-paragraph 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." The detail required by the sub-paragraph should remain in the discretion of the Chief, but does not prohibit commentor's suggestion.

6. APCO suggests the insertion of 5.1.a.D which would separately identify federally enforceable requirements.

OAQ is in agreement with the suggestion but would recommend the separate identification of all "State only" requirements. See Response to Manufacturers Comments, Comment S.

7. APCO suggests that the term "emergency", as used in 5.7.a, delete the phrase "which situation requires immediate corrective action to restore normal operation . . .".

OAQ cited the provisions of 5.7.a directly from the federal operating permit program rule 40CFR70.6(g). As such, OAQ recommends that the language remain as written.

8. APCO expresses concern with the provisions of 6.3.b. APCO suggests that a permit shield apply to applications submitted by the due date even though a completeness determination is made after the deadline for filing an application.

OAQ has inserted suggested language into the proposed rule to address these permit shield questions.

9. APCO urges the incorporation of the $18 per ton fee and the 4,000 ton cap per pollutant. Further, APCO endorses the exclusion of Phase I units from permit fees unit January, 2000.

APCO suggests that Phase I affected units not be required to submit fees under 45CSR22. Further, APCO suggests the phrase in 8.1.b "or portion thereof" be deleted.

OAQ believes that Phase I units should be required to pay fees under 45CSR22. The Clean Air Act clearly states that no emission-based fees be assessed to Phase I affected units until the year 2000. EPA has suggested that fees other than emissions-based fees are perfectly acceptable to the Title V program. Such fees would include application fees or any other non-emissions based fee. 45CSR30, as written, allows Phase I affected units to emit millions of tons of SO_2 and other pollutants without any resultant Title V contribution. OAQ recommends that the language remain as written.

10. APCO believes that the provisions of 8.6 regarding applications fees be deleted.

OAQ agrees with the Commentor.

11. APCO expresses the opinion that a yearly emissions statement under the provisions of 8.8 is a desirable method of accounting for emissions.

12. APCO comments that OAQ must be accountable for all Title fees.

See Response to Manufacturer's Comments YY.

13. APCO suggests the addition of Paragraph 12.5.a which would clarify that facilities which are not permitted for hazardous air pollutants and not subject to Title III are not subject to fees for hazardous air pollutant emissions.

OAQ believes that any hazardous air pollutant subject to a standard under 42U.S.C.7412 is a "regulated pollutant (for fee calculation)".

45CSR30
RESPONSE TO COMMENTS ALLEGHENY POWER SYSTEM
AUGUST 4, 1993

1. APS suggests an insert to provide for insignificant emissions units.

See response to Manufacturers Comment H.

2. APS suggests that it is not appropriate to address fugitive emissions in the permit application or permit in the same manner as stack emissions. APS suggests deletion of Sub-section 3.4.

OAQ would recommend that the language remain as written. The language of Sub-section 3.4 is the same as that contained in 40CFR70, the federal operating permit program rule.

3. APS voices concern with the provisions of 4.1.b "completeness determination". APS suggests language such that a permit shield will be in effect from the date of permit application until the final permit is issued, provided that the applicant submits additional requested information by the deadline set by the Chief.

OAQ has inserted suggested language into the proposed rule to address these permit shield questions.

4. APS suggests the insertion of a section to develop detailed specific criteria for determining whether or not an application is complete.

OAQ believes that the core elements of a permit application are set out in detail in the provisions of Sub-section 4.3 "Standard application form and required information." As required submittals for each individual source will vary greatly, OAQ believes that the more general provisions of Sub-section 4.3 adequately address this issue. OAQ recommends that the language remain as written.

5. APS suggests that a section be included to identify federally enforceable requirements in Title V operating permits.

OAQ recommends that as Title V is a federal operating permit program that "State only" requirements be separately addressed. The bulk of all requirements of a Title V operating permit are federally enforceable. Thus, listing "State only" requirements would be less of an administrative burden. The rule, as written, provides that "state-only" requirements are to be identified. All other requirements are federally enforceable.

6. APS suggests a rewrite of Paragraph 5.7.a regarding emergencies.

"Emergency", as defined in the proposed rule, agrees with the definition as contained in 40CFR70.

7. APS recommends that a permit shield apply to permit application renewals submitted by the due date.

OAQ has inserted suggested language into the proposed rule to address these permit shield questions.

8. APS requests that the permit shield apply to minor permit modifications.

In accordance with the provisions of 40CFR70(e)(2)(vi), the permit shield may not extend to minor permit modifications.

9. APS recommends a fee of $18 per ton per year. APS also states that the rule needs an automatic adjustment mechanism to modify the fee annually rather than require a separate rulemaking period.

See Chief's Response to Fee Proposal.

10. APS agrees with the temporary fee exemption for Phase I units and the fee cap of 4,000 tons.

11. APS requests that the provisions of 8.6 regarding application fees be deleted.

OAQ is in agreement with this suggestion and has proposed such deletion.

12. APS expresses concern with the provisions of 8.8.b.B regarding certified emissions statements. APS states that a source should not be considered out of compliance if operating permits are withheld due to a dispute over fee adjustments.

In most instances, operating permits will be issued for a period of five (5) years which should result in few, if any, disputes under this section. However, OAQ believes that the payment of fees necessary to administer Title V is a significant element in whether or not a source is in compliance with the terms of its operating permit. OAQ would recommend that the language remain as written.

13. APS suggest that OAQ be accountable for all Title V fees.

See addition to 45CSR30 at 8.8.

14. APS requests the addition of the following phrase to Sub-section 13.5: "Emissions that are not regulated or limited at a facility or are unquantifiable are not subject to the emission fee of Section 8."

See Response to APCO Comments Paragraph 13.

45CSR30
RESPONSE TO AUGUST 5, 1993 INFORMAL COMMENTS BY USEPA

I. "Synthetic minor" issue addressed by deletion of section eleven.

II. Comment addresses Code provisions and are not relevant to the rule 45CSR30.

III. Comment addresses Code provisions and are not relevant to the rule 45CSR30.

IV. Comment addresses Code provisions and are not relevant to the rule 45CSR30.

V. Comment addresses Code provisions and are not relevant to the rule 45CSR30.

VI. The comments under this section indicate that the section as written follow minimum federal guidelines for approval.

VII. OAQ believes that the terms "air pollutant" and "regulated air pollutant" are adequately defined under the terms of the rule.

VIII. Involves W.Va. Code provisions. The Comment is not applicable to the rule.

IX. Comments are addressed in Response to Informal USEPA Comments July 6, 1993.

Except, the comment regarding "research and development" facilities. The APCC incorporated R & D facilities into the rule for treatment as separate sources where located at a production plant. The APCC relied upon the language in the preamble of 40C.F.R.70 in making this determination.

Also, the comment regarding 11.4 is not applicable in light of the deletion of section eleven.

PUBLIC COMMENTS ON FEES PROPOSED IN 45CSR30 AND RESPONSE TO COMMENTS BY THE OFFICE OF AIR QUALITY

The rule proposed for hearing incorporated the Clean Air Act-presumptive $25/ton fee level for a full funding level for the Title V operating permit program. A $20/ton fee assessment was proposed as a "ramp-up" fee to be assessed only once for FY94-95.

Comments were received from the West Virginia Manufacturers Association and three individual corporations concerning fees under the proposed rule: Allegheny Power Systems (APS), Appalachian Power Company (APCO), and Capitol Cement Corporation (CCC).

Comments common to most of these commentors concerned the basis for and acceptability of the fee amount ($/ton), the effect of and basis of the proposed CPI riser, permit modification fees, accountability of the agency with respect to fees and usage, and the need for an adequate fee adjustment mechanism. WVMA, APS, and APCO urged deletion of the permit application fees for modification (at subsection 8.5) and eliminating or changing the basis of the CPI riser (at subsection 8.4). CCC objected to a fee assessment in 1994 prior to USEPA approval of the rule. APCO requested clarification that hazardous air pollutants not subject to any rule were not subject to fees and objected to the continued applicability of 45CSR22 to Phase I utility plants under Title IV of the Clean Air Act.

In its early written comments, the WVMA expressed its support for an $18/ton "full" funding level as did APCO and APS. The WVMA had also supported a $15/ton "ramp-up fee". These funding levels were based upon Office of Air Quality (OAQ) information that had been supplied to interested parties in discussions of the new program during the last year. On the closing day of the public comment period, however, WVMA submitted a new, separate comment document specifically addressing fees and put forward an argument for a $9.50/ton fee level. The WVMA document indicated that this new proposal had the support of APCO and APS which had provided earlier, separate comments, as described above.

OAQ Response to Comments

With respect to comments on necessary fee levels, the Office of Air Quality provided to the Commission a summary of a staffing plan developed in 1992 (this had been provided to the Commission much earlier) based upon the OAQ's analysis of needs and a review of workload and Title V fee analyses prepared by other states which were also developing operating permit programs. A total staff level of approximately 110, mostly consisting of engineers and other technical staff was projected to be needed to administer the Clean Air Act-mandated Title V operating permit program and other air pollution control programs required under federal and state law and regulations. A breakdown of this staffing plan and operating costs between anticipated Title V-related activities vs non-Title V-related activities shows that Title V activities account for $4,000,000 - $4,500,000 of a total projected program cost of approximately $5,700,000 to $6,000,000. It is important to emphasize that Title V of the federal Clean Air Act mandates that all direct and indirect costs associated with implementing the Title V program be supported by fees.

The Clean Air Act presumes that most state agencies will have to charge facilities subject to title V requirements $25/ton of regulated air pollutant emissions to adequately fund their Title V programs. Any lessor amount proposed to USEPA for operating this program will have to be fully justified as adequate for USEPA approval. If USEPA disapproves the state's operating permit program due to insufficient funding or other deficiencies, fees for program operation would eventually be required to be paid to USEPA for operation of a federal permit program.

In analyzing the WVMA's August 5, 1993 fee analysis and associated staffing plans and costs, some major and glaring deficiencies can readily be identified. The OAQ and WVMA are in fairly close agreement in projecting the number of permit writers that would be required with the OAQ and WVMA projecting a need for approximately 18-20 Title V permit writers. The WVMA analyses assume that only 19 additional staff members at OAQ would be needed for all other Title V-related functions. These include all clerical functions; all ambient air monitoring functions; all compliance monitoring activities, including inspections, report reviews, stack tests observations and results analysis, preparation of notices of violations, etc; fallout sampling, all data processing, yearly emission inventory compilation, emission standards and rule development, and numerous other activities. The WVMA assumption is that all of these activities other than technical work for permit drafting could be accomplished statewide with only 5 technical compliance personnel, 5 ambient air monitoring technicians, 1 attorney, 6 secretaries, and 2 additional staff members.

In contrast, the OAQ currently requires 16 ambient air monitoring personnel (2-3 short of present needs) alone to carry out an activity which is predominantly dictated by stationary source impacts in West Virginia. OAQ estimates that 70-75% of air monitoring costs are attributable to stationary source activity representing a staffing component of approximately 12 technical positions alone. As a further example of the inadequacy of the WVMA-proposed staffing level, OAQ reports that efforts directed to emissions inventory creation and maintenance has in the past dominated the time of as many as 7 technical staff members over two or more years to complete only a partial data base for any particular year.

Even assuming that all compliance monitoring activity (the major Title V function after permit writing) could be accomplished statewide by only 5 technical personnel (the OAQ believes that at least 4 times this number is necessary), 14 additional technical staff members for current air monitoring and emissions inventory work alone would be required above the staff level contemplated in the August 5, 1993 WVMA comments on fees. In summary, the OAQ believes that its earlier analyses showing that approximately 80 people would be necessary for Title V program implementation is a much more accurate projection of program needs than that shown in the WVMA's August 5, 1993 document.

In response to the other issues raised by commentors, the OAQ recommended and the Commission adopted the following revisions to the rule as originally proposed:

- The base year for the CPI adjustment was changed from 1989 to 1993 (the current year from which estimated funding is provided).

- A provision requiring an accounting of all fees received and the manner in which they were expended by October 1 of each year was added as subsection 8.8.

- Original subsection 8.6 requiring application fees for permit modifications was deleted.

- Provisions for fees for "conditioned minor sources" were deleted consistent with the deletion of provisions for the permitting of such sources.

The Commission also adopted the WVMA's early proposal of a $2/ton adjustment provision relative to an $18/ton fee level except that the Commission provided that the $2/ton level could be adjusted either up or down. The OAQ's review of the other issues raised indicated that the commentors' concerns were addressed as the rule was drafted.