STATE OF WEST VIRGINIA

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I, Carl G. Beard, II, Secretary
Title of Position

Air Pollution Control Commission, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

( ) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

( ) proposed rules and regulations superseding rules and regulations already on file;

( ) notice of hearing;

(X) findings and determinations;

(X) rules and regulations; or

( ) other - specify (

This filing pertains to Temporary Regulation XIX-A - "Requirements for Preconstruction Review, Determination of Emission Offsets for Porposed New, Modified or Reconstructed Stationary Sources of Air Pollutants and Bubble Concept for Intra-source Pollutants"

Chapter 16
Article 20
Series XIX-A
Section
Page No.

( ) proposed rules and regulations are required to go to Legislative Rule Making Committee;

(X) proposed rules and regulations are excluded from Legislative Rule Making Committee;

January 18, 1982
Date Submitted

Carl G. Beard II
Signature of Person Authorizing this Filing

WEST VIRGINIA
AIR POLLUTION CONTROL COMMISSION

STATEMENT OF FACTS AND CIRCUMSTANCES CONCERNING
TEMPORARY REGULATION XIX-A

Each state, under the Federal Clean Air Act, must file a state implementation plan. Part of the state implementation plan, according to Federal requirements, must contain rules and regulations concerning a specific regulatory process for new source review for areas where air quality standards are not currently being met. As final Federal rules have yet to be adopted, the West Virginia Air Pollution Control Commission adopted temporary Regulation XIX-A at their meeting on January 13, 1982, to fulfill this Federal requirement.

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Subject: Regulation XIX-A-Requirements for Preconstruction Review, Determination of Emission Offsets for Proposed New, Modified or Reconstructed Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
Air Pollution Control Commission

Chapter 16-20
Series XIX-A
(1982)

Subject: Regulation XIX-A- Requirements for Preconstruction Review, Determination of Emission Offsets for Proposed New, Modified or Reconstructed Stationary Sources of Air Pollutants and Bubble Concept for Intrasource Pollutants.

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Section 1. Intent and Purpose

1.01. Emission Offsets

It is the intent of the Commission that all applications filed by any person to construct major new, modified or reconstructed stationary air pollution sources, intending to locate in areas with air quality worse than the levels set to protect the public health and welfare, or that might impact those areas, must adequately meet the preconstruction review procedures and conditions of the Clean Air Act Amendments of 1977 and this regulation.

These conditions are designed to insure that the major new, modified or reconstructed source's emissions will be controlled to the greatest degree practicable; that more than equivalent offsetting emission reductions ("emission offsets") will be obtained from

existing sources; that there will be progress toward achievement of the National Ambient Air Quality Standards; and that all applicable air pollution regulations adopted by the Commission will be met.

1.02. Bubble Concept

It is the intent of the Commission to extend to the owners or operators of existing sources of air pollutants the option of proposing alternative emission reduction plans employing a more economically efficient mix of control technology.

This alternative emission reduction concept, called the "Bubble Concept", permits the owners or operators of sources to place a greater burden of control on facilities where the cost of control technology is low, and a lesser burden where the cost is high.

The use of the bubble concept is intended to be, and should be interpreted to be, an alternative means to expeditious compliance with the applicable regulations, not as a way to avoid or delay compliance with the applicable regulations, or any requirements of Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended, or the Federal Clean

Air Act, as amended, nor as a way to avoid, delay, or reduce the sanctions flowing from previous or future noncompliance.

Section 2. Definitions

2.01. "Actual Emissions", shall mean the actual rate of emissions of a pollutant from an emissions unit using the units actual operating hours, production rates, and type of materials processed, stored or combusted during a selected time period, which time period shall be a two year period unless a determination is made by the Director that a different time period is more representative of normal source operation. For any emissions unit which has not begun normal operations, actual emissions equal the potential to emit of the unit on the date of filing of the application to construct.

2.02. "Allowable Emissions", shall mean the emissions rate calculated using the maximum rated capacity of the source and the most stringent of the following:

(a) The applicable regulations for such source; or,

(b) The emissions rate specified as a permit condition.

2.03. "Applicable Regulations", shall mean the West Virginia Administrative Regulations of the Air Pol-

lution Control Commission as promulgated pursuant to Chapter 16, Article 20, of the Code of West Virginia, of 1931, as amended.

2.04. "Applicant", shall mean any person who makes application to this Commission for a permit to construct, modify or relocate a source in West Virginia under the provisions of these regulations.

2.05. "Air Pollutants", shall mean solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

2.06. "Air Quality Control Region (AQCR)", is defined in West Virginia as follows:

Region I - made up of the counties of Brooke, Hancock, Marshall and Ohio;

Region II - made up of the counties of Jackson, Pleasants, Tyler, Wetzel and Wood;

Region III - made up of the counties of Cabell, Mason and Wayne;

Region IV - made up of the counties of Kanawha and Putnam, and the Valley Magisterial District of Fayette County;

Region V - made up of the counties of Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh and Wyoming, and Fayette (except the Valley Magisterial District);

Region VI - made up of the counties of Barbour, Harrison, Marion, Monongalia, Preston and Taylor;

Region VII - made up of the Union Magisterial District of Grant County and the Elk, New Creek, and Piedmont Magisterial Districts of Mineral County;

Region VIII - made up of the counties of Braxton, Calhoun, Clay, Doddridge, Gilmer, Lewis, Nicholas, Ritchie, Roane, Upshur, Webster and Wirt;

Region IX - made up of the counties of Greenbrier, Hampshire, Hardy, Monroe, Pendleton, Pocahontas, Randolph, Summers, Tucker, the Grant and Milroy Magisterial Districts of Grant County, and the Cabin Run, Frankfort, and Welten Magisterial Districts of Mineral County;

Region X - made up of the counties of Berkeley, Jefferson and Morgan.

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

2.08. "Begin Actual Construction", shall mean, in

general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities which mark the initiation of the change.

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

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

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

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

2.11. "Construction", shall mean any physical change or

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

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

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

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

2.15. "Fixed Capital Cost", shall mean the capital needed to provide all the depreciable components.

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

2.17. "Intrapollutant Emission Offsets", shall mean that emission offsets may only be achieved for the same air pollutants which have comparable physical and chemical characteristics and properties (e.g., hydrocarbon increases may not be offset against SO_2

reductions or coke plant particulate matter may not be offset against boiler fly ash).

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

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

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

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

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

performance.

2.20. "Major Modification", shall mean any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation by the Commission. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

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

(e) Use of an alternative fuel or raw material

by a stationary source which:

(1) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.18 or CFR 51.24; or

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

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.18 or 40 CFR 51.24.

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

2.21. "Major Stationary Source", shall mean:

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

(b) Any physical change that would occur at a

stationary source not qualifying under paragraph 2.21 (a) as a major stationary source if the change would constitute a major stationary source by itself.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

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

2.23. "Necessary Pre-construction Approvals or Permits", shall mean those permits or approvals required by the Air Pollution Control Commission and the Clean Air Act as amended or any regulations promulgated thereby or thereunder.

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

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

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

(1) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences, and

(b) The date that the increase from the particular change occurs.

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

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

(4) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is judicially enforceable at and after the time that actual construction on the particular change begins;

(c) The Director has not relied on it in issuing

any permit under this regulation; and

(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(5) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

2.25. "Nonattainment Area", shall mean for the purpose of this regulation, those areas designated by the Commission as not having attained National Ambient Air Quality Standards for specific air pollutants.

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

pounds per hour and/or tons per year basis, than one-to-one with respect to the proposed emissions from the different source (or facility within such source) so that total emissions from the source(s) including all existing and proposed facilities for a given pollutant shall be less than baseline emissions. This term shall also mean an emission reduction of a given pollutant achieved at a facility within an existing source that allows for the emission of such given pollutant at a different facility within the same existing source.

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

2.28. "Potential to Emit", shall mean the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of

operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is approved and enforceable by the Commission. Secondary emissions do not count in determining the potential to emit of a stationary source.

2.29. "Reasonable Further Progress", shall mean the annual reductions in emissions of pollutants in nonattainment areas committed to by the Commission in the West Virginia State Implementation Plan to assure attainment of National Ambient Air Quality "NAAQS".

2.30. "Reconstruction", shall mean the replacement of components of an existing stationary source to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new stationary source. In addition, any determination shall also be considered in accordance with 40 CFR 60.15 (f) (1-3). A reconstructed stationary source will be treated as a new stationary source for purposes of this regulation. In determining LAER for a reconstructed stationary source, the provisions of 40 CFR 60.15 (f) (4) shall be taken into

account in assessing whether a new source performance standard is applicable to such stationary source.

2.31. "Resource Recovery Facility" shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to be considered a resource recovery facility under this regulation.

2.32. "Secondary Emissions", shall mean emissions which occur as a result of the construction and/or operation of a major source or major modification, or reconstruction, but do not come from the source itself.

Secondary emissions may include, but are not limited to:

(a) Emissions from vessels or trains coming to or from a refinery, terminal facility, etc.

(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a major source, modification or relocation.

2.33. "Significant", shall mean, in reference to a

net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates for such pollutants:

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

2.34. "Source", shall mean any structure, building, facility, equipment, or installation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control), which may directly or indirectly cause any air pollutant to be emitted.

2.35. "Temporary Source", and "sources of temporary emissions", shall mean for a source located in a nonattainment area and subject to this regulation, those emissions occurring for a period of time less than two years.

Other words and phrases used in this regulation, unless otherwise indicated, shall have the meaning ascribed to them in Chapter 16, Article 20, Section

2, of the Code of West Virginia, 1931, as amended.

Section 3. Applicability

3.01. This regulation shall apply to all major stationary sources intending to locate in a designated nonattainment area and to all major modifications or reconstruction to any existing sources located in designated nonattainment areas. This regulation shall also apply to all proposed major stationary sources and to all major modifications or reconstruction to any such sources located anywhere in the State whose emission would cause a violation of a NAAQS or which would cause a significant impact on air quality in a designated nonattainment area.

3.02. The determination under this regulation of whether such a source will cause or significantly contribute to a violation of a NAAQS will be made by the Director upon a case-by-case review of the results of an adequate demonstration submitted by the applicant.

3.03. This regulation shall not apply to sources of temporary emissions such as pilot plants, portable facilities which will be relocated away from the nonattainment area after a short period of time, emissions resulting from the construction phase of a new source, resource recovery facilities utilizing municipal solid waste to provide more than 50 percent of the

heat input for generating steam or electricity. However, the lowest achievable emission rate (LAER) shall apply to all such sources located in or having a significant impact on a nonattainment area with respect to the specific pollutant for which the area has been designated as nonattainment.

Section 4. Conditions for a Permit Approval for Proposed Major Sources That Would Contribute to a Violation of a NAAQS

4.01. (a) Upon determination by the Director that the emissions from a proposed new major source or major source modification, or reconstruction, located within a nonattainment area, or located elsewhere and having a significant impact on pollutant concentrations in a nonattainment area, as of such source's proposed start-up date, permit approval may be granted only if such source agrees within its permit application and permit, to meet the following conditions:

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

(2) The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control of the applicant) in West Virginia

are in compliance with all applicable emission limitations and standards of the Clean Air Act and Chapter 16, Article 20, of the Code of West Virginia, 1931, as amended, or any rule or regulation promulgated thereunder, or is in compliance with a compliance program which is judicially enforceable or contained in a court decree;

(3) More than equivalent emission offsets from existing sources in the nonattainment area impacted by the proposed new source, modification or reconstruction, (whether or not under the same ownership) are required such that there will be reasonable further progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets are acceptable;

(4) The emission offsets will provide a positive net air quality benefit in the affected nonattainment area. Fulfillment of Sub-Section 4.01 (a) (3) above and Sub-Sections 8.02 (a) and (d) will be adequate to meet this condition.

(b) Upon determination by the Director that technological or ecomomic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible,

the applicant may, by petition, request that the Commission approve an appropriate design, operational or equipment standard. In the event that the applicant's proposed design, operational or equipment standard is unacceptable to the Commission, the Commission shall determine an appropriate measurement methodology or design, operational or equipment standard and shall incorporate such determinations and requirements within the permit.

Section 5. Conditions for Permit Approval for Sources Locating in Attainment or Unclassifiable Areas That Would Cause a New Violation of a NAAQS

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

Section 6. Exemption from Certain Conditions

6.01. (a) The Commission, upon petition by the applicant, may exempt the following sources from the requirements of Sub-Sections 4.01 (a) (3) and (4), and Section 5.01:

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

(2) Sources which must switch fuels:

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

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

(b) Such exemptions may be granted only if:

(1) The applicant demonstrates that it made its best efforts to obtain sufficient emission offsets to comply with Sub-Sections 4.01 (a) (3) and (4) and Section 5.01, and that such efforts were unsuccessful; and

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

(3) The applicant will continue to seek the necessary emission offsets and apply them when they become available, and the State's committment to reasonable further progress will not be adversely

affected.

Section 7. Baseline for Determining Credit for Emission Offsets

7.01. (a) The baseline for determining credit for emission offsets will be the applicable regulation emission limitations in effect at the time the application to construct, modify or reconstruct a source is filed.

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

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

(d) Where the applicable regulation requires certain design, operational or equipment standards in lieu of an emission limitation (such as floating

roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous one to two year period, whichever is appropriate, in conjunction with such design, operational or equipment standards.

7.02. Where the applicable regulation does not contain an emission limitation for a source or source category, the emission offset baseline involving such sources shall be the actual emissions determined in accordance with Section 7.01.

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

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

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

source application is filed.

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

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

(b) Emission offsets that involve reducing operating hours or production or source shutdowns must be agreed to in the permit application and embodied in the permit.

(c) Source shutdowns and curtailments in production or operating hours occurring prior to the date the new source application is filed generally may not be used for emission offset credit. However, where an applicant can establish that it shut down

or curtailed production after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source is a replacement for the shutdown or curtailment, credit for such shutdown or curtailment may be applied to offset emissions from the new source.

7.06. No emission offset credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for the following compounds: methane, ethane, 1, 1, 1-Trichloroethane (Methyl Chloroform), and Trichlorotrifluoroethane (Freon 113).

Section 8. Location of Offsetting Emissions

8.01. Offsets shall be obtained from sources located as close to the proposed new, modified or reconstructed source site as possible.

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

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

(2) Emission offsets for sources of sulfur dioxide (SO_2), and total suspended particulate (TSP), should be obtained from an existing facility on the same premises or in the immediate vicinity of the new or modified source.

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

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

(d) The appropriate modeling referred to in Section 8.02 (c) above is as follows:

(1) For sulfur dioxide (SO_2) and toatl suspended particulate (TSP), the source's allowable

emissions should be used in an atmospheric simulation model to ensure that the emission offsets provide a positive net air quality benefit. It may, however, be assumed that if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height, the air quality test of Sub-Section 4.01 (a) (4) will be met without the necessity of modeling. Thus, when stack emissions are offset against a ground level source at the same time, modeling would be required.

(2) Atmospheric simulation modeling is not necessary for volatile organic compounds. For such pollutants, meeting the requirements of Sub-Section 4.01 (a) (3) and Sub-Section 8.02 (a) (1) will be adequate.

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

(b) VOC sources locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for ozone) of a

nonattainment monitor shall also be subject to Section 4 of this regulation.

(c) A VOC source may be exempt from these requirements if the source owner can demonstrate that the emissions from the proposed source will have virtually no effect upon any nonattainment area for ozone. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO_x to form additional ozone.

Section 9. Administrative Procedures for Emission Offset Proposals

9.01. Emission offsets may be proposed either by the owner of the proposed major new, modified or reconstructed sources or by the local community or the State.

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

granted, within the construction permit.

(b) If the emission reductions are to be obtained in a State that neighbors West Virginia, for offset credit for a proposed major new, modified or reconstructed source located in West Virginia, the offsets committed to must be embodied in a State Implementation Plan revision in the neighboring State and must be judicially enforceable by both States and the U. S. Environmental Protection Agency in accordance with the Clean Air Act, as amended, August 7, 1977.

9.02. (a) Such source may propose emission offsets which involve:

(1) Reductions from sources controlled by the source owner (or by persons under common control); and/or

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

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

9.03. Any emission offset proposal described in Section

9.02 (a) (2) above must be embodied either in the applicant's permit application and permit or in a consent order as provided in Chapter 16, Article 20, Section 5 (17) of the Code, which such consent order shall be submitted to the US EPA for inclusion in the State Implementation Plan.

Section 10. Banking of Emission Offset Credit

10.01. Major new, modified, or reconstructed sources obtaining permits after January 16, 1979, by applying offsets that exceed the requirements herein are permitted to save ("bank") such offset credit for up to two (2) years to provide offsets for a source seeking a permit in the future under the requirements of this regulation.

10.02. (a) The owner of an existing source that permanently reduces emissions by shutdown or curtailment is permitted to bank any resulting reductions beyond baseline emissions for use in accordance with this regulation.

(b) These banked reductions or offsets may only be used as offset credit by the applicant in a subsequent application filed within a period of two (2) years from the date of said permanent shutdown or permanent curtailment, notwithstanding

the provisions of Sub-Section 7.05 (c). Such offsets shall be identified in the construction permit application.

10.03. Emission reductions not banked or which are not used as offset credit within the specified time will be credited to the State for use or disposal by the Commission at its sole discretion.

10.04. To preserve banked emission offsets, the owner thereof shall notify the Director in writing within sixty (60) days of any such permanent shutdown or permanent curtailment, and the Director shall record the emission offsets in a registry and identify the person that has the right to use, transfer, or allocate the banked emission offsets and shall record any transfers of such banked emission offsets after written notice thereof.

Section 11. Control of Fugitive Emissions

Fugitive emissions associated with major new, modified or reconstructed sources subject to this regulation shall not be excluded from the provisions of this regulation.

Section 12. Offsetting of Secondary Emissions

12.01. The conditions of this regulation must be met for secondary emission of a particular pollutant only if the applying major source is subject to this

regulation for emission of that same pollutant.

12.02. For the purposes of this regulation, secondary emissions must be shown as specific and well-defined, must be quantifiable, and must impact the nonattainment area as the major source which causes the secondary emissions.

12.03. Secondary emissions shall not be considered in determining whether the significant levels in Section 2.33 would be exceeded.

12.04. (a) For the following pollutants, the determination of whether, in the area of nonattainment, there is any overlap between the areas of impact of the direct emissions and the secondary emissions, shall be based on a pollutant-by-pollutant analysis:

(1) For total suspended particulate (TSP) and sulfur dioxide (SO_2), the areas of impact shall be determined by modeling in accordance with Sub-Section 8.02 (d).

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

(b) If the proposed source owner and the Director disagree as to whether the secondary emissions impact the same area as the direct emissions, the source

owner has the burden of proving it is correct by performing the necessary modeling.

Section 13. Bubble Concept for Intrasource Pollutants

13.01. The owner or operator of a source with multiple process-related emission facilities (stacks, vents, ports, etc.), each of which is subject to specific emission requirements under the applicable regulations, may propose to meet the total emission control requirements of the applicable regulations, for a given pollutant, through a different mix of control technology than that mandated by existing or proposed regulations.

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

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

13.04. An approved bubble concept design shall be in effect for any source for a period of no more than three years from the date of issuance. At the end of such three-year period, the Commission shall review the bubble concept design for such source and may either terminate or extend approval of the design based on consideration of air quality, control technology innovation, compliance and such other determinations as the Commission deems appropriate.

Section 14. Discretionary Decisions Made by the Director

Any discretionary decision made by the Director as provided herein may be appealed to the Commission for review by petition. Such review shall be discretionary with the Commission.

Section 15. Conflict with Other Rules or Regulations

When a provision of this regulation conflicts with a similar portion(s) of any rule or regulation previously adopted by the Commission, the provision(s) of this regulation shall apply.

Section 16. Effective Date

Regulation XIX-A shall become effective as a temporary regulation the 22nd day of January, 1982.

The foregoing is a true and correct copy of the West Virginia Air Pollution Control Commission

Temporary Regulation XIX-A adopted on the 13th day of January, 1982.

Carl G. Beard, II
Secretary
West Virginia Air Pollution
Control Commission