

**TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AIR QUALITY**

**SERIES 13  
PERMITS FOR CONSTRUCTION, MODIFICATION, RELOCATION  
AND OPERATION OF STATIONARY SOURCES OF AIR POLLUTANTS, NOTIFICATION  
REQUIREMENTS, ADMINISTRATIVE UPDATES, TEMPORARY PERMITS, GENERAL  
PERMITS, PERMISSION TO COMMENCE CONSTRUCTION, AND PROCEDURES FOR  
EVALUATION**

**§45-13-1. General.**

1.1. Scope. -- The purpose of this rule is to set forth the procedures for stationary source reporting, and the criteria for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, to relocate non-major stationary sources within the state of West Virginia, and to set forth procedures to allow facilities to commence construction in advance of permit issuance. Such construction, modification, relocation, and operation without a required permit is a violation of this rule. This rule also establishes the requirements for obtaining an administrative update to an existing permit, a temporary permit or a general permit registration, and for filing notifications and maintaining records of changes not otherwise subject to the permit requirements of this rule. This rule does not apply to nonroad engines, nonroad vehicles, motor vehicles, or other emission sources regulated under Subchapter II of the federal Clean Air Act; however, the Secretary may regulate such sources pursuant to another rule promulgated for that purpose.

1.2. Authority. -- W. Va. Code §§ ~~22-5-1 et seq.~~ 11 and 11a

1.3. Filing Date. -- ~~May 8, 2009.~~

1.4. Effective Date. -- ~~June 1, 2009.~~

~~1.5. Former Rules. — This legislative rule amends and replaces 45CSR13 “Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits and Procedures for Evaluation” which was filed on April 21, 2003, and which became effective June 1, 2003.~~

**§45-13-2. Definitions.**

2.1. "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as described below:

2.1.a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two (2)-year period which precedes the particular date and which is representative of normal source operation. The Secretary may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2.1.b. The Secretary may presume that source-specific allowable or permitted emissions for the unit are equivalent to the actual emissions of the unit.

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2.1.c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date or the actual emissions of an existing source with similar operations and production levels at the Secretary's discretion.

2.2. "Administrative update" means any revision of a current and valid permit or general permit registration which meets the provisions of Section 4 of this Rule.

2.3. "Clean Air Act" ("CAA") means the federal Clean Air Act, as found at 42 U.S.C. § 7401 et seq., as amended.

2.4. "Commenced" means that an owner or operator has all necessary preconstruction approval or permits and has undertaken a continuous program of physical site preparation, construction, modification, or relocation, or that a binding general construction contract has been entered into which obligates one (1) party to such contract to perform the physical work involved in such program of construction, modification, or relocation of a source or emissions unit. Interruptions resulting from acts of God, strikes, or other matters beyond the control of the owner shall be disregarded in determining whether a construction, modification, or relocation program is continuous unless otherwise specifically provided within this rule.

2.5. "Construction" means any physical change or change in the method of operation (including onsite fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in an increase in the potential to emit or an increase in actual emissions of regulated air pollutants unless otherwise specifically provided within this rule.

2.6. "De minimis source" means any emissions unit listed in Table 45-13B below, whether individual or a part of a common plan (i.e., a common set of new sources or physical changes in or changes in the method of operation of any existing stationary source). A "de minimis source" is deemed to have insignificant emissions and/or is not usually a source of quantifiable emissions which can be practically regulated in determining potential to emit or actual emissions for the purpose of determining whether a permit is required under this rule. Emissions to the extent quantifiable from emissions units listed in Table 45-13B do not need to be added together by the source unless otherwise required by the Secretary.

2.6.a. Unless otherwise determined by the Secretary, emissions from a de minimis source shall not be included in determining the "potential to emit" for purposes of applicability under this rule. However, in implementing the permitting program under this rule, the Secretary may require emissions information for de minimis sources for inclusion in a permit review. Sources located in nonattainment areas may not be eligible to use Table 45-13B for the pollutant or its precursors for which the area is in nonattainment. Inclusion of an emissions unit in Table 45-13B does not preclude the source's duty to comply with W. Va. Code § 22-5-1, et seq. and all applicable State rules and federal regulations, including 45CSR4.

2.6.b. Emissions units listed in Table 45-13B do not require any monitoring, recordkeeping or reporting unless specifically requested by the Secretary.

2.6.c. Notwithstanding any other requirements and standards of this rule, a source may use the procedures described in subsection ~~5.13~~ 5.12 to petition the Secretary for a determination of regulatory applicability for a particular emissions unit that may meet the criteria for a "de minimis source" but which is not specifically listed in Table 45-13B.

2.7. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§ 22-1-6 or 22-1-8.

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- 2.8. "Discharge" means the release, escape, or emission of air pollutants into the air.
- 2.9. "Emissions unit" means any part or activity of a stationary source that emits or discharges or has the potential to discharge or emit any regulated air pollutant.
- 2.10. "Enforceable" means enforceable by the Secretary and U. S. EPA unless specifically designated to mean otherwise in this rule.
- 2.11. "EPA" or "U. S. EPA" means the United States Environmental Protection Agency.
- 2.12. "Existing stationary source operating permit" means a permit issued by the Secretary at the request of an owner or operator of a stationary source which establishes enforceable emission rates, operating conditions, and compliance determination procedures for that source based upon applicable rules and terms agreed to by the Secretary and the owner or operator.
- 2.13. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.
- 2.14. "Hazardous air pollutant" or "HAP" means any substance listed pursuant to section 112(b) of the Clean Air Act.
- 2.15. "Major modification" has the meanings ascribed to this term in 45CSR14 or 45CSR19 depending upon the attainment status, with respect to the National Ambient Air Quality Standards, of the area in which a particular stationary source is located.
- 2.16. "Major stationary source" has the meaning ascribed to this term in 45CSR14, 45CSR19 or 45CSR30.
- 2.17. "Modification" for the purpose of this rule means any physical change in or change in the method of operation of any existing stationary source, excluding any emissions unit which meets or falls below the criteria delineated in Table 45-13B, which:
- 2.17.a. Results in an emissions increase of six (6) pounds per hour and ten (10) tons per year or more, or more than 144 pounds per calendar day, of any regulated air pollutant, other than emissions of any one or the aggregate of all Greenhouse Gases (GHG's), the air pollutant defined in 40 C.F.R. § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;
- 2.17.b. Results in an emissions increase of two (2) pounds per hour or five (5) tons per year of hazardous air pollutants considered on an aggregated basis;
- 2.17.c. Results in an increase in emissions of an air pollutant listed in Table 45-13A below of ten percent (10%) or more of the amount set forth in Table 45-13A at a facility which, prior to the physical change or change in method of operation, has the potential to emit the air pollutant at or above the amount set forth in Table 45-13A; provided that nothing in this subdivision shall affect the facility's obligation to comply with 45 C.S.R. 27;
- 2.17.d. Results in an increase in emissions of any air pollutant listed in Table 45-13A that would in turn result in total emissions of the air pollutant at the stationary source equal to or greater than the amounts in Table 45-13A; or

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2.17.e. Results in any regulated air pollutant emissions increase for which the owner or operator of a source voluntarily chooses to obtain a modification permit pursuant to this rule, even though the owner or operator is not otherwise required to do so.

2.17.f. The following actions, however, shall not constitute a modification of a stationary source:

2.17.f.1. Installation or replacement of air pollution control equipment, provided that such new equipment is at least as effective in the control of air pollutant emissions as any equipment replaced and that no new air pollutant discharge results from its installation;

2.17.f.2. Routine maintenance, repair, and replacement (excluding such activities that are subject to new source performance standards under 45CSR16);

2.17.f.3. An increase in hours of operation, unless a limitation has been explicitly placed upon hours of operation in an applicable permit or order;

2.17.f.4. An increase in throughput or production rate, if such increase does not exceed the design capacity of the source or emissions unit, or increase emissions above the levels provided in this paragraph and there is no explicit limitation of production rate or throughput in an applicable permit or order; or

2.17.f.5. Use of an alternative fuel or raw material, provided that the source is designed to accommodate such alternative use without increasing emissions above the levels provided in this paragraph and such usage is not prohibited by an applicable permit or order.

2.17.f.6. An emissions reduction for each regulated pollutant from current actual emissions to new potential emissions from any replacement of a natural gas compressor engine not previously required to obtain a permit under this rule with another natural gas compressor engine: provided that the owner or operator of the source shall notify the Secretary of such replacement and the emissions reduction within ten (10) working days of the replacement.

2.18. "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, association or business entity of whatever nature.

2.19. "Potential to emit" means the maximum design capacity of a stationary source or emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source or emissions unit 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 if the limitation or the effect it would have on emissions is enforceable by the Secretary and U. S. EPA in any permit or consent order. Secondary emissions shall not be included in any determination of a stationary sources potential to emit.

2.19.a. Notwithstanding the provisions of subsection 2.19, any natural gas compressor which is equipped with a catalytic converter which is integral to the unit shall have its potential to emit determined taking into consideration reductions achieved by the catalytic converter Said catalytic converter must be interlocked in such a way as to not allow operation of the engine without operation of the catalytic converter. The catalytic converter shall have the catalyst replaced every 45,000 hours of operation or every ten (10) years, whichever is earlier, as established by records kept by the source, unless the Secretary approves an alternative method of verifying catalyst effectiveness.

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2.19.b. Upon written petition by a facility that an air pollution control device is inherent to the emission unit, the Secretary may rule on a case-by-case basis that potential to emit may be determined taking into consideration reductions achieved by the control device. "Inherent to the emission unit" means that the emission unit cannot be operated without the air pollution control device being properly maintained.

2.20. "Regulated air pollutant" for the purpose of this rule means the following:

2.20.a. Nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), or particulate matter;

2.20.b. Any air pollutant for which a national ambient air quality standard has been promulgated including particulate matter (PM<sub>10</sub>), sulfur dioxide, carbon monoxide, nitrogen dioxide, ozone, and lead or lead compounds;

2.20.c. Any air pollutant listed on table 45-13A below;

2.20.d. Any air pollutant subject to an emission standard promulgated by the Secretary including mineral acids in 45CSR7;

2.20.e. Any air pollutant subject to a new source performance standard (NSPS) promulgated under section 111 of the Clean Air Act (including section 111(d)), which requires new and modified sources to satisfy emissions standards, work practice standards and other requirements;

2.20.f. Any of the ozone-depleting substances specified as a Class I (primarily chlorofluorocarbons) or Class II substance (hydrochlorofluorocarbons) under Title VI of the Clean Air Act; or

2.20.g. Any air pollutant subject to a standard or other requirement promulgated under section 112 of the Clean Air Act, specifically excluding air pollutants listed only in 112(r).

2.21. "Relocation" means the physical movement of a stationary source outside the existing plant boundaries.

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

2.22.a. For a corporation or other business entity: a president, secretary, treasurer, or vice-president of the corporation or business entity in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation or business entity, 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 two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1990 dollars), or (ii) a representative delegated with such authority and approved in advance by the Secretary;

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

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

2.22.d. The designated representative delegated with such authority and approved in advance by the Secretary.

2.23. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a stationary source or of a modification, but do not come from the stationary source or modification itself. For the purpose of this rule, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include, but are not limited to, emissions from any off-site support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the stationary source or modification.

2.24. "Stationary source" means, for the purpose of this rule, any building, structure, facility, installation, or emission unit or combination thereof, excluding any emissions unit which meets or falls below the criteria delineated in Table 45-13B, which:

2.24.a. Is subject to any substantive requirement of an emission control rule promulgated by the Secretary;

2.24.b. Discharges or has the potential to discharge more than six (6) pounds per hour and ten (10) tons per year, or has the potential to discharge more than 144 pounds per calendar day, of any regulated air pollutant, other than emissions of any one or the aggregate of all Greenhouse Gases (GHG's), the air pollutant defined in 40 C.F.R. § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride;

2.24.c. Discharges or has the potential to discharge more than two (2) pounds per hour or five (5) tons per year of hazardous air pollutants considered on an aggregated basis;

2.24.d. Discharges or has the potential to discharge any air pollutant(s) listed in Table 45-13A in the amounts shown in Table 45-13A or greater; or

2.24.e. An owner or operator voluntarily chooses to be subject to a construction or modification permit pursuant to this rule, even though not otherwise required to do so.

2.25. "Statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

2.26. "Store on-site" means that any equipment, supplies, emission unit or any support equipment which make up in part or in whole an emission unit or any support equipment may be received and located at a stationary source, including on its permanent pad or foundation, but it shall not be modified, constructed, erected or installed. Any equipment, supplies, emission unit or any support equipment which make up in part or in whole an emission unit or any support equipment which are "stored on-site" shall be kept in the same condition as it was received, except that packaging material may be removed.

2.27. "Volatile Organic Compounds" (VOC) has the same meaning as defined in 40 CFR § 51.100(s).

2.28. "WVDEP/DAQ webpage" means any webpage maintained by the West Virginia Department of Environmental Protection's (WVDEP) Division of Air Quality (DAQ) used to provide the public access to Division of Air Quality documents such as permits, applications, evaluations, etc.

~~2.27~~ 2.29. Other words and phrases used in this rule, unless otherwise indicated, have the meaning ascribed to them in W. Va. Code § 22-5-1, et seq. and any rules promulgated thereunder.

**§45-13-3. Reporting Requirements for Stationary Sources.**

3.1. The owner or operator of a stationary source may be required by the Secretary to collect, report and maintain data on the operation of such stationary source. The Secretary may request reports of such data in a reasonable manner and detail as the Secretary may specify. If requested, such reports shall be filed within thirty (30) days of the end of the established reporting period. However, reports on such data shall not exceed one (1) per month.

**§45-13-4. Administrative Updates to Existing Permits and General Permit Registrations.**

4.1. Upon the request of the permittee, or with the permittee's consent, the Secretary may revise or update a valid existing permit or general permit registration issued pursuant to this rule as necessary to incorporate any administrative update identified in subsection 4.2, provided that no administrative update to a general permit registration shall be inconsistent with the terms and conditions of the applicable general permit.

4.1.a. At the Secretary's discretion a determination may be made that an applicant is not eligible for an administrative update pursuant to this section.

4.1.b. Any final decision on an administrative update application shall be issued by the Secretary within a reasonable time not to exceed sixty calendar days after receipt of a complete application by:

4.1.b.1. Issuing the administrative update;

4.1.b.2. Issuing the administrative update with reasonable conditions in addition to those requested;

4.1.b.3. Denying the administrative update request; or

4.1.b.4. Determining that the requested change does not meet the criteria of this section and should be reviewed under other provisions of this rule or other rules of the Secretary.

4.1.c. Should the Secretary deny an administrative update request, he or she shall do so in writing, providing the reasons therefor. The denial is not subject to public notice or comment nor is it subject to appeal under W. Va. Code §§ 22-5-14 or 22B-1-7. Any permit which is issued as amended pursuant to this section may be appealed under W. Va. Code §§ 22-5-14 or 22B-1-7.

4.1.d. The Secretary may incorporate changes to a permit or general permit registration as an administrative update without providing notice to the public, provided that such permit revisions are designated as Class I administrative updates as defined in subdivision 4.2.a. Class II administrative updates as defined in subdivision 4.2.b ~~must be noticed~~ require public notice by the applicant at the time of application in accordance with the provisions of subsection ~~8.3~~ 8.2.

4.1.e. Should the Secretary intend to make an administrative update to a permit pursuant to this section with the permittee's consent, or to make changes to the permittee's application for an administrative update, the Secretary shall provide the permittee with no less than fifteen (15) days written notice of that intent in order to provide an opportunity for the permittee to comment on that intent before the Secretary takes any of the actions specified in subdivision 4.1.b.

4.2. Administrative updates to a valid existing permit or general permit registration issued pursuant to this rule are authorized with respect to any change under subdivision 4.2.a or 4.2.b that does not otherwise constitute a modification as defined by this rule. No applicant shall seek an administrative update pursuant to this section to circumvent any part of this rule or any other state or federal rule or regulation.

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Any notification request under subsection ~~5.13~~ 5.12 that the Secretary determines will require an administrative update shall comply with this section.

4.2.a. Class I administrative updates are limited to the following:

4.2.a.1. Correction of typographical errors;

4.2.a.2. Corrections or updates to mailing addresses, contact personnel or telephone numbers if contained in the permit, or change in the name of the permittee which does not involve any change in the ownership or operational control of a permitted source or unit;

4.2.a.3. Change in the construction schedule with regard to any interim schedule requirement to the extent that such a change does not interfere with any obligation under the existing permit to have pollution control equipment installed and in operation and to the extent that such a change is allowed by subsection 10.2;

4.2.a.4. Change in a permit condition to incorporate any new more stringent requirements related to an applicable rule promulgated after the existing permit was issued and that do not result in a physical change in or change in the method of operation of the source;

4.2.a.5. Change in a permit condition to incorporate any new more stringent requirements related to new information not considered at the time the existing permit was issued;

4.2.a.6. Permanent removal of equipment, not including air pollution control equipment;

4.2.a.7. Change in monitoring, recordkeeping or reporting requirements for sources which are not major sources which are determined by the Secretary to be equivalent or superior to the existing permit requirements; or

4.2.a.8. Change in a permit condition as necessary to allow changes in operating parameters, emission points, control equipment or any other aspect of a source which results in ~~a decrease~~ no increase in the emission of any existing regulated air pollutant or any new regulated air pollutant.

4.2.b. Class II administrative updates are limited to the following:

4.2.b.1. Change in a permit condition as necessary to allow changes in operating parameters, emission points, control equipment or any other aspect of a source which results in an increase ~~or no change~~ in the emission of any existing regulated air pollutant or any new regulated air pollutant; or

4.2.b.2. Other minor changes as may be allowed on a case-by-case basis by the Secretary.

4.3. A person requesting an administrative update of a permit or general permit registration shall submit any information the Secretary may request describing the effect of the proposed change, if any, on emissions and ambient air quality from the source. The information submitted must be certified to be true, accurate and complete by a responsible official in the manner required for a permit application. Upon a determination by the Secretary that there is a potential for significant ambient air quality impact, the source may be required to submit appropriate additional information or to apply for the appropriate permit. When requested, it is the duty of the applicant to supply sufficient information to the Secretary to demonstrate there will be no significant air quality impact.

4.4. Any permittee other than a small business as defined in section 507(c) of the federal Clean Air Act which requests a Class II administrative update to a valid existing permit pursuant to this section shall submit a permit application fee of three hundred dollars (\$300).



4.5. The permittee may implement the changes addressed in the request for a Class I administrative update immediately upon submittal of the request. After the permittee makes the requested Class I changes, and until the Secretary takes any of the actions specified in subdivision 4.1.b, the permittee must comply with the proposed changes to the permit. During this time period, the source need not comply with the existing permit terms and conditions it seeks to change. However, if the permittee fails to comply with its proposed permit change during this period, the existing permit terms and conditions it seeks to modify may be enforced against it. Should the permittee implement such a change immediately, the permittee will do so at its sole risk, and the permittee shall not assert as any argument, including legal or equitable, in any proceeding (administrative, civil or criminal) that such action occurred.

**§45-13-5. Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources.**

5.1. No person shall cause, suffer, allow or permit the construction or modification or relocation and operation of any stationary source to be commenced without notifying the Secretary of such intent and obtaining a permit to construct, modify, relocate and operate the stationary source as required in this rule or any other applicable rule promulgated by the Secretary. Construction of a major stationary source or a major modification shall be subject to the pre-construction permit requirements of 45CSR14 or 45CSR19 depending upon the air pollutants involved and the attainment status of the area in which the source or modification would occur. A source subject to 45CSR14 or 45CSR19 is not subject to the requirements of this rule. For the purposes of this rule, the following do not constitute activities pursuant to subsections 2.4 and 2.5, and prior to obtaining a permit to construct, modify, relocate and operate, a source may:

5.1.a. Clear land;

5.1.b. Grub stumps, roots and other natural impediments to site development;

5.1.c. Excavate, grade and compact topsoil to establish temporary and final grade;

5.1.d. Dig and construct foundations and/or caissons and grade beams;

5.1.e. Demolish existing structures, provided that all activity must comply and comport with all existing State rules and federal regulations including, but not limited to, asbestos requirements pursuant to ~~45CSR15~~45CSR34, applicable National Emission Standards for Hazardous Air Pollutants pursuant to section 112 of the Clean Air Act, applicable requirements of the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), and ~~applicable solid waste requirements~~ the West Virginia Solid Waste Management Act, W. Va. Code § 22-15-1, et seq and the rules promulgated thereunder, including 45CSR25;

5.1.f. Upgrade the utility support facilities, provided that in no instance shall these upgrades cause or contribute to new or increased emissions unto themselves or increase emissions from any other unit;

5.1.g. Construct or modify structures which are strictly office buildings, warehouses or buildings that could potentially be used for those purposes;

5.1.h. Order equipment and procure supplies with which an emissions unit could be composed, provided that such ordering and procuring is not in violation of any other state rule; or

5.1.i. Receive or store on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure. A source may store on-

site any equipment, supplies, emission unit or any support equipment on its permanent pad or foundation or at any other location at the stationary source.

5.2. Prior to obtaining a permit to construct and operate, a source may not cause the erection or installation of an emissions unit unless granted permission under section 16.

5.3. All activities listed under subdivisions 5.1.a. through 5.1.i. shall be conducted solely at the risk of the owner or operator of the stationary source and, in undertaking any such activities, the owner or operator shall not assert as any argument, including legal or equitable, in any proceeding (administrative, civil or criminal) that such activities or investment has occurred.

5.4. Any person proposing to construct, modify, relocate and operate a stationary source after the effective date of this rule shall file a complete permit application with the Secretary and shall not construct, modify, relocate and operate the stationary source until the Secretary issues a permit approving of the construction, modification, relocation and operation. The application shall contain sufficient information as, in the judgment of the Secretary, will enable the Secretary to determine whether the source construction, modification, relocation and operation will be in conformance with the provisions of any applicable rules promulgated by the Secretary. Such information may include, but not be limited to, site information, plans, descriptions, specifications, and drawings relating to the proposed construction, modification, or relocation of the source, the manner in which it will be operated, maximum emission rates and emissions control equipment data.

5.5. Any person who owns or operates an existing stationary source may voluntarily request a permit to operate the stationary source under enforceable terms established in an existing stationary source operating permit issued pursuant to this rule. The owner or operator shall submit a complete permit application requesting coverage under the terms and conditions of an existing source operating permit issued in accordance with the permit application and all applicable rules of the Secretary. The issuance of existing stationary source operating permits by the Secretary shall be in accordance with all provisions of this rule including public participation provisions under section 8.

5.6. All permit applications under this rule shall be signed by a responsible official of the entity which will own or operate the stationary source. The signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, or relocation and operation of the stationary source in accordance with the permit application, permit, applicable rules promulgated by the Secretary, and W. Va. Code § 22-5-1, et seq.

5.7. The Secretary shall issue such permit or registration unless he or she determines that the proposed construction, modification, registration or relocation will violate applicable emission standards, will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment, or be inconsistent with the intent and purpose of this rule or W. Va. Code § 22-5-1, et seq., in which case the Secretary shall issue an order denying such construction, modification, relocation and operation. The Secretary shall, to the extent possible, give priority to the issuance of any such permit so as to avoid undue delay and hardship.

5.7.a. The Secretary shall issue a permit for all construction or modifications and operation of a stationary source within a reasonable time not to exceed ninety (90) calendar days, after the date the Secretary determines the application is complete. The Secretary may extend this time by thirty (30) calendar days to allow for public comment.

5.7.b. The Secretary shall, within a reasonable time not to exceed forty-five (45) ~~days~~ calendar days after the date the Secretary determines that an application is complete, issue a registration under a general permit, unless he or she determines that the proposed construction, modification, relocation and operation will not be in accordance with this rule.

5.7.c. The Secretary shall, within a reasonable time not to exceed forty-five (45) calendar days after receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she determines that the proposed construction, modification, relocation and operation will not be in accordance with this rule.

~~5.8.—The Secretary shall complete a review of any application for an existing stationary source operating permit within one hundred eighty (180) days of receipt of a complete application and either issue an operating permit or deny coverage under an existing stationary source operating permit if a determination is made that the source or some portion thereof does not comply with applicable rules of the Secretary or if the Secretary determines that acceptable compliance determination provisions cannot be incorporated to satisfy permit terms requested by the permit applicant.~~

—5.9. The Secretary shall review all permit applications for completeness within thirty (30) days from receipt and notify the applicant in writing as to whether the application is complete or specify any information required. Any determination of completeness or lack thereof shall not relieve the permit applicant of the requirement to subsequently submit, in a timely manner, any additional or corrected information deemed by the Secretary to be necessary for permit or general permit registration approval. The Secretary shall act upon all applications; however, the periods set forth in this section for application review by the Secretary shall not be deemed to have begun until such time as the permit application is deemed complete.

~~5.10~~ 5.9. Any denial order for a permit application for the proposed construction, modification, relocation, registration for a general permit and operation of any source shall set forth the reasons of such denial with reasonable specificity.

~~5.11~~ 5.10. The Secretary may impose any reasonable condition as part of a granted administrative update, construction, modification, existing stationary source operating permit or relocation permit. Such condition may include, but not be limited to, the submission of periodic progress, operation or emissions reports, the provisions for a suitable emissions sampling site and the installation of air pollutant monitoring devices. The Secretary shall impose or incorporate, consistent with all applicable rules, enforcement conditions which assure that all emission limitations contained within the permit are quantifiable, permanent and practicably enforceable. The Secretary may, on the basis of information provided in a permit application or with the agreement of the permit applicant, impose source-specific emission limitations, limits on the hours of operation or production rates, or other constraints to minimize air pollutant discharges or establish enforceable emission caps for a stationary source not otherwise specifically required by a rule of the Secretary promulgated pursuant to W. Va. Code § 22-5-1, et seq. Any portions of the permit application, other than plans and specifications, that are to be made permit conditions must be specifically identified in the permit itself.

~~5.12~~ 5.11. The Secretary may develop and issue Class I and Class II general permits under this rule authorizing the construction, modification, relocation and operation of a category of sources by the same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit.

~~5.12.a~~ 5.11.a. Class I general permits may be issued by the Secretary for those types of sources considered less significant than sources for which the Secretary issues Class II general permits. In making this determination as to significance, the Secretary shall consider the nature and volume of emissions from the source, whether the source operates on a continuous or an intermittent basis, the proximity of the source to any location occupied by the public and the length of time the source is expected to remain in place. The designation of Class I or Class II for a general permit shall be made at the time the permit goes through public comment and adoption for the source category governed by the general permit.

~~5.12.b~~ 5.11.b. Class I and II general permits shall be subject to public notice requirements and application fees as specified under sections 8 and 12, respectively.

~~5.13~~ 5.12. The owner or operator of any stationary source which adds an additional emissions unit or makes a change in the method of operation which results in an emissions increase, or in the discharge of a new regulated air pollutant, in an amount below the levels which require a permit to modify, excluding the emissions units listed in Table 45-13B, may notify the Secretary in writing even though a permit is not required. The notification shall briefly describe the emission unit or change, the pollutants involved, the potential to emit for each pollutant increased or added and supporting calculations. Within thirty (30) working days of receipt of such a notice, the Secretary shall notify the owner or operator in writing if the Secretary believes a permit is required, setting forth the reasons with reasonable specificity or shall notify the owner or operator that insufficient information was submitted to enable a determination to be made and specify the information required.

~~5.14~~ 5.13. The owner or operator of any stationary source which adds an additional emissions unit or makes a change in the method of operation which results in an emissions increase, or in the discharge of a new regulated air pollutant, in an amount below the levels which require a permit to modify, excluding the emissions units listed in Table 45-13B, shall maintain records briefly describing the emission unit or change, the pollutants involved, the potential to emit for each pollutant increased or added and supporting calculations. Such records shall be maintained by the owner or operator for at least two (2) years and shall be made available to the Secretary upon request.

~~5.15~~ 5.14. Any person holding a permit issued pursuant to subsection 5.5 may make a written request to the Secretary for a cancellation of such permit. If granted by the Secretary, such a cancellation shall not excuse any violation of the permit terms or conditions prior to the Secretary's cancellation of such permit. In no case shall such a permit cancellation become effective until the permittee and U.S. EPA are provided with a sixty (60) day written notice of such a permit cancellation.

#### **§45-13-6. Determination of Compliance of Stationary Sources.**

6.1. At the time a stationary source is alleged to be in compliance with an applicable emission standard and at reasonable times to be determined by the Secretary thereafter, appropriate tests consisting of visual determinations or conventional in-stack measurements or other tests the Secretary may specify shall be conducted to determine compliance.

6.2. For cause, the Secretary may request the owner or operator of a stationary source to install stack gas monitoring devices the Secretary deems necessary to determine continuing compliance. The data from such devices shall be readily available for review at the source location or other reasonable location that the Secretary may specify. At the request of the Secretary, the data shall be made available for inspection or copying, and the Secretary may require periodic submission of excess emission reports.

6.3. If, after completion of a stack test required by the Secretary, a source fails to prove compliance with permit conditions, W. Va. Code § 22-5-1, et seq., or any rules promulgated thereunder, the source shall immediately take steps approvable by the Secretary which shall assure compliance. These steps may include a reduction in throughput capacity or additional and enhanced control devices.

#### **§45-13-7. Modeling.**

7.1. Any source required to obtain a permit pursuant to this rule may be required to conduct modeling to assist the Secretary in determining whether the proposed construction, modification, relocation and operation will interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent

and purpose of this rule or W. Va. Code § 22-5-1, et seq. Any modeling required under this subsection shall be conducted in accordance with 40CFR Part 51, Appendix W, or an alternative modeling protocol approved by the Secretary.

#### §45-13-8. Public Review Procedures.

8.1. The Secretary shall maintain for public review a permit application list of proposed new stationary sources, source modifications, relocations, operating permits, Class II administrative updates, temporary permits, Class II general permit applications/registrations, and sources seeking permission to ~~construct~~ commence construction in advance of permit issuance containing the name of the applicant, the type and location of the source, and the proposed start-up date for the stationary source.

~~8.2. During the time period that an applicant's name appears on the permit application list, the Secretary will receive and evaluate written comments relating to the permit application.~~

~~8.3. Notice Level A. At the time that an application for a construction, modification, relocation, operating permit, Class II administrative update, temporary permit or Class II general permit registration is filed, the applicant shall also place a Class I legal advertisement in a newspaper of general circulation in the area where the source is or will be located. No such permit or general permit registration shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought, the proposed start up date for the source and a contact telephone number for more information.~~

Notice Level A. Relocation, Class II Administrative Update, temporary permit or Class II general permit registration applications shall have a thirty (30) day public comment period. The public comment period shall begin after the application is received and has been posted on the WVDEP/DAQ webpage. No such permit or general permit registration shall be issued to any applicant until at least thirty (30) days' notice has been provided to the public. The information provided on the webpage shall be available for the duration of the public comment period and shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and a contact telephone number for more information.

~~8.4. Notice Level B. In addition to the notice requirements under subsection 8.3, for construction and modification applications, applications for sources subject to 45CSR15, 45CSR16, 45CSR27 and 45CSR34, and all other applications not subject to the provisions of subsections 8.3 or 8.5, the Secretary shall place a Class I legal advertisement of the agency's intent to issue in a newspaper of general circulation in the area where the source is or will be located, provided that applications for Class I administrative updates and Class I general permit registrations are not subject to public notice. No construction, modification or operating permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and the proposed start up date for the source. Additionally, at the Secretary's discretion, the applicant may be required to place a commercial display advertisement as set forth in subdivision 8.4.a.~~

8.3. Notice Level B. Permit applications for construction, modification, and sources subject to 45CSR16, 45CSR27 and 45CSR34 shall have a thirty (30) day public comment period. The public comment period shall begin after the application, an engineering evaluation and draft permit have been posted on the WVDEP/DAQ webpage. No such permit shall be issued to any applicant until at least thirty (30) days' notice has been provided to the public. The information provided on the webpage shall be available for the duration of the public comment period and shall contain at a minimum, the name of the applicant, the

type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and a contact telephone number for more information.

~~8.4.a. Within one week prior to the Secretary's placement of a Class I legal advertisement of intent to issue or within three (3) working days of the Secretary's placement of the advertisement, the applicant shall publish a commercial display advertisement in a newspaper of general circulation in the area where the source is or will be located. The commercial display advertisement shall be at least 3 inches by 5 inches and contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought, the proposed start up date for the source and a contact telephone number for more information.~~

8.3.a In addition to the notice requirements under subsection 8.3, for eligible sources for which the agency intends to issue a permit to limit physical and operational capacity below major stationary source thresholds (including 45CSR14, 45CSR19, 45CSR30 and 45CSR34), the Secretary shall clearly identify the application seeking such a restriction by identifying these sources as "Synthetic Minor" on the WVDEP/DAQ webpage. Within one week of submittal of a permit application subject to this subsection, the applicant shall post a visible and accessible sign, at a minimum two (2) feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that an air quality permit has been applied for and include the West Virginia Division of Air Quality permitting section telephone number for additional information. The applicant must post the sign for the duration of the application review period until final action is made (e.g., permit issuance, withdrawal, permit denial).

~~8.5. Notice Level C. In addition to the notice requirements under subsection 8.3, for eligible sources for which the agency intends to issue a permit to limit physical and operational capacity below major stationary source thresholds (including 45CSR14, 45CSR19, 45CSR30 and 45CSR34), the Secretary shall place a Class I legal advertisement of the agency's intent to issue in a newspaper of general circulation in the area where the source is or will be located. No permit shall be issued to any applicant until at least thirty (30) days notice has been provided to the public. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the nature of the permit being sought and the proposed start up date for the source. Additionally, the applicant shall be required to place a commercial display advertisement as set forth in subdivision 8.4a. and a sign as set forth in subdivision 8.5.a.~~

~~8.5.a. Within one week prior to the Secretary's placement of a Class I legal advertisement of intent to issue or within three (3) working days of the Secretary's placement of the advertisement of submittal of a permit application, the applicant shall post a visible and accessible sign, at a minimum 2 feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that an air quality permit has been applied for and include the West Virginia Division of Air Quality permitting section telephone number for additional information. The applicant must post the sign for the duration of the public notice period.~~

~~8.6. At the Secretary's discretion, public notice requirements of subsection 8.4 may be moved to the next higher notice level.~~

8.4. Applications for Class I administrative updates and Class I general permit registrations are not subject to public notice.

~~8.7~~ 8.5. The Secretary shall, prior to issuance of any permit subject to public notice under ~~subsections 8.4 or 8.5~~ subsection 8.3, prepare an engineering evaluation supporting his or her stated intent to issue such a permit. The Secretary shall make available for the duration of the public comment period on the WVDEP/DAQ webpage and shall transmit to U. S. EPA and any other interested party which so requests, a non-confidential copy of the engineering evaluation and a draft copy of the permit which is proposed for

issuance. Concurrently, the Secretary shall notify the public ~~through a Class I legal advertisement in accordance with the provisions of subsections 8.4 or 8.5~~ subsection 8.3.

~~8.8~~ 8.6. The Secretary shall review and appropriately address any comments received from the public and U. S. EPA prior to permit issuance.

~~8.9~~ 8.7. Public notice of any proposed new or revised general permit, Class I or Class II, must be conducted by the agency in accordance with the provisions of subsection ~~8.4~~ 8.3. The Secretary shall, prior to issuance or revision of any general permit, prepare a rationale document supporting his or her stated intent to issue or revise such general permit and shall transmit to U. S. EPA and any other interested party which so requests, a non-confidential copy of the rationale document and a draft copy of the general permit which is proposed for issuance or revision. The Secretary shall review and appropriately address any comments received from the public and U. S. EPA prior to the issuance or revision of any general permit.

#### **§45-13-9. Public Meetings.**

9.1. A public meeting(s) to provide information and receive comments on permit applications may be held when the Secretary deems it appropriate or when substantial interest is expressed, in writing, by persons who might reasonably be expected to be affected by the stationary source.

9.2. The Secretary shall preside over such meeting and assure that all interested parties have ample opportunity to present comments. Such meeting shall be held at a convenient place as near as practicable to the location or proposed location of the stationary source.

9.3. At a reasonable time prior to such meeting, the Secretary shall provide appropriate information to news media in the area where the stationary source or proposed stationary source is located or to be located or otherwise provide notice of the meeting.

#### **§45-13-10. Permit Transfer, Suspension, Revocation and Responsibility.**

10.1. Any permit issued under this rule may be transferred from a permittee to another person by modification of an existing permit or by transfer under this subsection. Any permit may be transferred to a new permittee if the Secretary determines that the proposed permittee has all necessary permit responsibility and the current permittee notifies the Secretary in writing at least 30 days in advance of the proposed transfer date. The proposed new permittee must certify to the Secretary, at least thirty (30) days in advance of the proposed transfer date, that a complete copy of the existing permit application and permit has been obtained and reviewed and that the new permittee shall adhere to the design and operating parameters contained in the application and comply with all terms and conditions in the permit. The notice must include a written agreement between the existing permittee and proposed new permittee containing a specific date for transfer of the permit and explaining the extent of permit responsibility between them. The Secretary shall notify the existing and proposed new permittee in writing of his or her intent to require the transfer through permit amendment, the filing of a new application or deny the transfer request. If such notification from the Secretary is not received by the existing permittee and proposed new permittee within thirty (30) days after the Secretary's receipt of their respective notices, then the transfer is effective on the date specified in the written agreement between the permittees.

10.2. The Secretary may suspend or revoke a permit or general permit registration if, after six (6) months from the date of issuance, the holder of the permit cannot provide the Secretary, at the Secretary's request, with written proof of a good faith effort that construction, modification, or relocation, if applicable, has commenced. Such proof shall be provided not later than thirty (30) days after the Secretary's request. If construction or modification of a stationary source is discontinued for a period of

eighteen (18) months or longer, the Secretary may suspend or revoke the permit or general permit registration.

10.3. The Secretary may suspend or revoke a permit or general permit registration if the plans and specifications upon which the approval was based or the conditions established in the permit are not adhered to. Upon notice of the Secretary's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the Secretary in accordance with the provisions of W. Va. Code § 22-5-5 to show cause why the permit or general permit registration should not be suspended, modified or revoked. After that conference, or if no conference is requested, the Secretary shall issue an order suspending, modifying or revoking the permit and send a copy of the same to the permit holder. If the permittee is aggrieved by the Secretary's order, the permittee may appeal the same to the Air Quality Board in accordance with the provisions of W. Va. Code § 22B-1-1, et seq.

10.4. Possession of a permit does not relieve any person of the responsibility of complying with any and all applicable provisions of Chapter 22 of the West Virginia Code or any applicable rules of the Secretary or W. Va. Code §22-1-1 et seq promulgated thereunder.

10.5. A source which has not operated at least 500 hours in one 12-month period within the previous five (5)-year time period may be considered permanently shutdown, unless such source can provide to the Secretary, with reasonable specificity, information to the contrary. All permits or general permit registrations may be modified or revoked and/or reapplication or application for new permits may be required for any source determined to be permanently shutdown.

#### **§45-13-11. Temporary Construction or Modification Permits.**

11.1. Upon written request by an owner or operator of a source, the Secretary may allow the owner or operator to make limited changes for experimental, testing, commercial development and other temporary purposes for limited periods of time without applying for a construction permit or permit modification otherwise required under the provisions of this rule for such activity. If granted, the temporary permit shall indicate the nature of the activity being approved, the time period for which the approval is being granted, and any conditions to be imposed on the approved activity.

11.2. To permit experimental, testing, commercial development and other temporary purposes, the Secretary may issue temporary permits for periods up to six (6) months (which may be extended in writing for up to twelve (12) additional months at the Secretary's discretion) upon the submission of a written application for such extension to the Secretary by the owner or operator. The Secretary may impose any reasonable conditions as part of a temporary permit which may include, but not be limited to, the submission of periodic progress or operation reports, the provision of suitable sampling sites for tests, emissions testing by the permittee, and the installation, operation, and maintenance of air pollutant monitoring devices.

11.2.a. The Secretary shall maintain for public review a permit application list of all pending applications for temporary permits containing, at a minimum, the name of the applicant, the type and location of the source, and the proposed start-up date for the stationary source. At the same time that an application for a temporary permit is filed with the Secretary, the ~~applicant shall also place a Class I legal advertisement in a newspaper of general circulation where the source is or will be located~~ application shall be made available for the duration of the public comment period on the WVDEP/DAQ webpage as required under subsection 8.2. ~~The advertisement information provided shall contain the information required under subsection 8.3.8.2.~~ No temporary permit may be issued by the Secretary until a thirty (30) day comment period is provided. During this time, the Secretary will receive and evaluate written comments relating to the application.



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11.2.b. The Secretary may suspend or revoke any temporary permit upon 24-hour notice to the permittee if the Secretary determines that suspension or revocation is appropriate to protect human health or the environment. Notice may be given verbally, but shall be confirmed in writing by the Secretary immediately thereafter.

11.3. Any temporary permit issued under this section which has expired is not eligible for extension nor is the permittee eligible to reapply for a temporary permit. The activities shall be solely at the risk of the owner or operator of the stationary source and, in undertaking any such activities, the owner or operator shall not assert as any argument, including legal or equitable, in any proceeding (administrative, civil or criminal) that such activities or investment has occurred.

11.4. Upon written request by an owner or operator of a source subject to a temporary permit, the Secretary may allow the owner or operator to conduct emissions testing under an approved protocol. If granted, the approval shall indicate the nature of the activity being approved, the time period for which the approval is being granted and any conditions to be imposed on the approved activity.

### **§45-13-12. Permit Application Fees.**

12.1. Applications for permits required under sections 5 and 11 shall be subject to the fee provisions of section 3 of 45CSR22, provided that Class I general permit registrations shall be subject to a \$250 application fee and Class II general permit registrations shall be subject to a \$500 application fee, in lieu of the \$1000 fee required under subdivision 3.4.a of 45CSR22. However, a source applying for a Class I general permit which qualifies as a small business under section 507(c) of the federal Clean Air Act shall not be subject to any application fees. The provisions of subdivision 3.4.b of 45CSR22 relating to additional fees shall not be applicable to sources applying for Class I general permits, but shall be applicable to sources applying for Class II general permits. Applications for permits under section 4 of this rule shall be subject to the fee provisions of that section.

### **§45-13-13. Inconsistency Between Rules.**

13.1. In the event of any inconsistency between this rule and any other rule of ~~the Secretary~~ the Division of Air Quality, such inconsistency shall be resolved by the determination of the Secretary and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

### **§45-13-14. Statutory Air Pollution.**

14.1. Upon a determination by the Secretary that a source should be made subject to the permitting requirement of this rule to prevent a statutory air pollution, the Secretary shall require the owner or operator of the source to apply for and obtain a permit pursuant to the provisions of this rule. The Secretary may require a permit for any source that would not otherwise be subject to this rule or with respect to any source that is subject to this rule with respect to emissions or potential emissions other than those emissions upon which the Secretary's finding is based. In issuing any permit condition required by this section, the Secretary may impose any reasonable condition necessary to prevent a statutory air pollution.

### **§45-13-15. Hazardous Air Pollutants.**

15.1. For purposes of establishing an inventory of hazardous air pollutants, any person who makes an application for a permit as required by subsections 5.1, ~~5.12~~ 5.11 or 11.2 shall include in the application information on the nature and extent of any emissions of hazardous air pollutants. Hazardous air pollutants (that are not air pollutants listed in Table 45-13A) shall be subject to limitations or controls only to the extent necessary:

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15.1.a. To incorporate an applicable requirement based upon any rule of the Secretary promulgated pursuant to W. Va. Code § 22-5-1, et seq.;

15.1.b. To implement subsection 5.5 related to voluntary permitting;

15.1.c. To establish case-by-case maximum achievable control technology (MACT) requirements as required by 45CSR34; or

15.1.d. To set an emission limit based upon the source's maximum potential to emit as provided in the permit application.

15.2. In the event of a subsequently issued MACT requirement, the facility may request a review of an existing permit received pursuant to this rule. When appropriate, said MACT requirements shall be incorporated into the permit.

15.3. Any source or source category that has been the subject of an analysis pursuant to Section 112(n) of the federal Clean Air Act shall be exempt from any limitations or controls on hazardous air pollutants until such time as it has been determined that MACT controls are applicable. In the event that MACT controls are determined to be applicable to a 112(n) source or source category, this section shall be applicable only to the hazardous air pollutants that are subject to such MACT.

### **§45-13-16. Application for Permission to Commence Construction in Advance of Permit Issuance.**

16.1. With respect to the modifications of non-major stationary sources, or modifications which are not major modifications to existing major stationary sources, any person who holds an active West Virginia air quality permit issued under this rule at an existing source, and who has applied for permission to alter, expand or modify that source or to allow a new emissions unit at that source, may begin the construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with this section. The person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by this rule.

16.2. Eligibility requirements. The following sources are ineligible for permission to commence construction in advance of permit issuance:

16.2.a. Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).

16.2.b. Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards.

16.2.c. Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

16.3. Application requirements. To qualify for the authorization to construct in advance of permit issuance as provided in this section, the permittee shall submit to the Secretary an application for permission to commence construction in advance of permit issuance. An application for permission to commence construction shall include all of the following:

16.3.a. The name and location of the source and the name and address of the permittee;

16.3.b. The permit number of each active permit issued under this rule for such source;

16.3.c. The nature of the sources and equipment associated with such alteration, expansion,

modification or new emission unit;

16.3.d. An estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit;

16.3.e. The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit;

16.3.f. A listing of the applicable State and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit and sufficient information which, in the judgment of the Secretary, will demonstrate compliance with any applicable State and federal air quality regulatory requirements;

16.3.g. The anticipated construction or building schedule for alteration, expansion, modification or new emission unit;

16.3.h. A certification signed by the responsible official that the source, equipment, and devices that are subject to a request for construction authorization will not be operated until the permittee has obtained a permit under rules promulgated by the Secretary;

16.3.i. A certification by the responsible official that any construction undertaken prior to the issuance of a final permit under rules of the Secretary is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a permit or permit modification without regard to the permittee's financial investment or addition to or modification of the source; and

16.3.j. A certification signed by the responsible official that all of the information contained in the application is complete and accurate to the best of the responsible official's knowledge and ~~ability~~ belief.

16.4. Public Notice. Upon submission of the application for permission to construct, the applicant shall give notice by publishing a Class I legal advertisement of the applicant's intent to alter or expand the physical arrangement or operation of an existing stationary source and the opportunity to provide written comment to the Secretary within thirty (30) calendar days of the publication.

16.4.a. The applicant shall post a visible and accessible sign, at a minimum two (2) feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that the applicant is seeking a permission to construct ~~has been applied for~~ in advance of permit issuance and include the West Virginia Division of Air Quality permitting section telephone number and website for additional information. The applicant must post the sign for the duration of the public notice period.

16.4.b. Public notice shall be in a newspaper having general circulation in the county or counties where the facility is located. The advertisement shall contain at a minimum, the name of the applicant, the type and location of the source, the type and amount of air pollutants that will be discharged, the fact that the applicant has applied for permission to construct in advance of permit issuance, the proposed start-up date for the source and a contact telephone number for more information.

16.4.c. Within fifteen (15) days of completion of the public comment period, the Secretary shall consider and respond to all written comments. If the Secretary finds that concerns raised by the public comment period give rise to issues or concerns that would cause a construction or operational permit not to be issued, the Secretary may issue a revocation or stay of the authorization to construct until those issues or concerns are resolved.

16.5. Completeness determination. The Secretary shall determine whether an application for permission to commence construction in advance of permit issuance is complete within fifteen (15)

calendar days after receipt of the application at which time the Secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

16.6. Determination regarding permission to commence construction. Within fifteen (15) calendar days after the Secretary has made a determination that an application for permission to commence construction in advance of permit issuance is complete, unless the Secretary for good cause shown extends the fifteen (15) day time period for up to an additional fifteen (15) calendar days, the Secretary shall notify the applicant in writing of his or her determination as to whether each of the following conditions has or has not been satisfied:

16.6.a. The applicant is and has been for a period of at least three years in substantial compliance with all other active permits and applicable State and federal air quality regulatory requirements under ~~this~~ all applicable air quality rules;

16.6.b. The applicant has demonstrated that the alteration, expansion, modification or new emission unit will be in compliance with all applicable State and federal air quality regulatory requirements;

16.6.c. The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of W. Va. Code § 22-5-1, et. seq.;

16.6.d. The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted;

16.6.e. The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted; and

16.6.f. The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.

16.7. If the Secretary finds that all of the conditions of subsection 16.6 have been satisfied, the Secretary shall notify the applicant in writing of his or her determination that construction of the alteration, expansion, modification or new emission unit in advance of permit issuance may begin immediately. If the Secretary finds that one or more of the conditions has not been met, the notice of determination shall state that the requested construction, alteration, expansion, modification or new emission unit may not begin prior to issuance of a new or modified permit under this rule.

16.8. If at any time during the construction of such alteration, expansion, modification or new emission unit, the Secretary determines that the source is not likely to qualify for a permit or permit modification under this rule, the Secretary may order that construction cease until the Secretary makes a decision on the application for a permit or permit modification.

16.9. If the Secretary orders that construction cease, than construction of the alteration, expansion, modification or new emission unit may resume only if the Secretary either makes a subsequent written determination that the circumstances that resulted in such order have been adequately addressed or issues a permit or registration under this rule that authorizes construction to resume.

16.10. The Secretary shall evaluate any application for a permit or registration under this rule and make a decision on the same basis as if the construction of the alteration, expansion, modification or new emission unit in advance of permit issuance had not been authorized pursuant to this section. No

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evidence regarding any contract entered into, financial investment made, construction undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under this rule is admissible in any contested case or judicial proceeding involving any permit or registration required under this rule. No evidence as to any determination or order by the Secretary pursuant to this section shall be admissible in any contested case or judicial proceeding related to any permit or registration required under this rule.

16.11. Any permittee who proceeds under this section shall be precluded from bringing any action, suit or proceeding against the State, the officials, agents or employees of the State or the Secretary for any loss resulting from any contract entered into, financial investment made, construction undertaken, or economic loss incurred by the permittee in reliance upon the provisions of this section.

16.12. This section does not relieve any person of the obligation to comply with any other requirement of State law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or method of operation of a source at a facility for which a permit or registration is required under this rule.

16.13. This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Secretary. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Secretary. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Secretary.

16.14. Application fee. A permittee who submits an application to commence construction in advance of permit issuance under this section shall pay a fee of \$200 for each application submitted to cover a portion of the administrative costs of implementing this section.

TABLE 45-13A

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

TABLE 45-13B

**DE MINIMIS SOURCES**

1. Air compressors and pneumatically-operated equipment, including hand tools; instrument air systems (excluding fuel-fired compressors); emissions from pneumatic starters on reciprocating engines, turbines or other equipment; and periodic use of air for cleanup (excluding all sandblasting activities).
2. Air contaminant detectors or recorders, combustion controllers or shutoffs.
3. Any consumer product used in the same manner as in normal consumers' 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.
4. Bathroom/toilet vent emissions.
5. Tobacco smoking rooms and areas.
6. Batteries and battery charging stations, except at battery manufacturing plants.
7. Bench-scale laboratory equipment used for physical or chemical analysis, excluding lab fume hoods or vents.
8. Routine calibration and maintenance of laboratory equipment or other analytical instruments.
9. Boiler water treatment operations, excluding cooling towers.
10. Portable brazing, soldering, gas cutting or welding equipment used as an auxiliary to the principal equipment at the source.
11. CO<sub>2</sub> lasers, used only in metals and other materials which do not emit any hazardous air pollutants in the process.
12. Combustion emissions from propulsion of mobile sources.
13. Wood heaters, cook stoves or fireplaces used for heating and/or cooking at residential or publicly-owned facilities.
14. Comfort air conditioning or ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.
15. Demineralized water tanks and demineralizer vents.
16. Drop hammers or hydraulic presses for forging or metalworking.
17. Equipment used exclusively for pressing, drawing or stamping of metals, excluding emissions due to quenching activities or supporting equipment.
18. Emissions from die-casting machinery, excluding emissions from melt furnaces or other associated

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processes.

19. Foundry sand molding forming equipment, provided no heat is applied and no VOCs or hazardous air pollutants are emitted, but not including the metal pouring process.
20. Electric or steam-heated drying ovens, autoclaves or steam sterilizers, excluding the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.
21. Emergency electrical generators at residential locations.
22. Emergency road flares.
23. Environmental chambers not using hazardous air pollutant gases.
24. Emissions from food preparation at restaurants and cafeterias.
25. Equipment used exclusively to slaughter animals, excluding other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.
26. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.
27. Fire suppression systems.
28. Firefighting equipment and the equipment used to train firefighters and emergency response individuals, which is subject to 45CSR6 and complies with ~~45CSR15~~ 45CSR34.
29. Single-use flares used solely to indicate danger to the public.
30. Hand-held applicator equipment for hot melt adhesives with no VOCs or hazardous air pollutants in the adhesive formulation.
31. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning or machining wood, metal or plastic.
32. Humidity chambers.
33. Hydraulic and hydrostatic testing equipment.
34. Mobile internal combustion engines used for landscaping purposes.
35. Laser trimmers using dust collection to prevent fugitive emissions.
36. Laundry activities, excluding dry-cleaning and steam boilers.
37. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.
38. Oxygen scavenging (de-aeration) of water.
39. On-site plant maintenance and upkeep activities, including lawn care, weed control, pest control, general repairs, cleaning, painting, surface coating, welding, plumbing, grinding, cutting,



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woodworking, janitorial activities, re-tarring roofs, installing insulation, and paving parking lots, provided that these activities are not conducted as part of a manufacturing process and are not related to the source's primary business activity; provided further, that for cleaning, surface coating and painting activities, the source is not subject to VOC or HAP control requirements and the source minimizes the generation of fugitive emissions of any regulated air pollutants; and provided further, that the source complies with the asbestos requirements in ~~45CSR15~~ 45CSR34.

40. Commercial and residential maintenance and upkeep activities occurring at a building, residence or other structure, including lawn care, weed control, pest control, general repairs, cleaning, painting, surface coating, welding, plumbing, grinding, cutting, woodworking, janitorial activities, re-tarring roofs, installing insulation, and paving parking lots, provided that these activities are not conducted as part of a manufacturing process; provided further, that for cleaning, surface coating and painting activities, the source is not subject to VOC or HAP control requirements and the source minimizes the generation of fugitive emissions of any regulated air pollutants; and provided further, that the source complies with the asbestos requirements in ~~45CSR15~~ 45CSR34.
41. Portable electrical generators that can be moved by hand from one location to another. "Moved by hand" means that it can be moved without the assistance of any motorized or non-motorized vehicle, conveyance or device.
42. Process water filtration systems and demineralizers.
43. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.
44. Shock chambers.
45. Solar simulators.
46. Steam cleaning operations, excluding hazardous air pollutant emissions.
47. Steam leaks.
48. Steam vents and safety relief valves, provided that such valves shall be included in any permit application that may otherwise be required under this rule.
49. Storage tanks, reservoirs and pumping and handling equipment of any size containing soaps, vegetable oil, animal grease or fat and aqueous salt solutions, provided appropriate lids and covers are utilized, excluding rendering plants.
50. Storage tanks, vessels and containers holding or storing liquid substances that will not emit any regulated air pollutant.
51. Vents from continuous emissions monitors and other analyzers.
52. Operation of groundwater remediation wells, including emissions from the pumps and collection activities. This does not include emissions from air-stripping treatment or storage.
53. Log wetting areas that are using only water.
54. Log flumes.
55. The storage, handling, and handling equipment for bark and wood dust not subject to 45CSR7.

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56. Solid waste dumpsters.
57. Ozone generators used in water treatment facilities.
58. Storage vessels having less than 10,567 gallons capacity containing petroleum or organic liquids with a vapor pressure of 1.5 psia or less at storage temperature, provided that the emissions from all such organic liquid storage tanks, in the aggregate, are less than 2 tons per year for hazardous air pollutants or VOCs.
59. A source that is not major that emits only non-processed fugitive emissions (other than haul roads).