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Section 1 - Permission to Commence Construction Application Requirements

The purpose of the Permission to Commence Construction is to allow construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with 45CSR13 Section 16, for those permittee's that hold an active West Virginia air quality permit issued under 45CSR13 at an existing source. However, the person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by 45CSR13.

Section 2 - Eligibility Requirements

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

1. Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).
2. Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards.
3. Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

Section 3 - Application Requirements

To qualify for the authorization to construct in advance of permit issuance as provided in 45CSR13 Section 16, the permittee shall submit an application for permission to commence construction in advance of permit issuance. Such application for permission to commence construction shall include all of the following:

1. The name and location of the source and the name and address of the permittee.
2. The permit number of each active permit issued under 45CSR13 for such source.
3. The nature of the sources and equipment associated with such alteration, expansion, modification or new emission unit.
4. 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.
5. The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit.
6. 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.
7. The anticipated construction or building schedule for alteration, expansion, modification or new emission unit.
8. 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.
9. 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.
10. 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.

Failure to submit this information may result in the application being deemed incomplete.

Section 4 - Attachments and Supporting Documents

Attachment A - Current Business Certificate

If the permittee is a resident of the State of West Virginia, the permittee should provide a copy of the permittee's current Business Registration Certificate issued to them from the West Virginia State Tax Department. If the permittee is not a resident of the State of West Virginia, the permittee should provide a copy of the Certificate of Authority/Authority of LLC/Registration.

Attachment B - Area Map

Provide a USGS 7.5 minute topographic Area Map showing the current location of the operation or plant. On this map, identify plant or operation property lines, access roads and any adjacent dwelling, business, public building, school, church, cemetery, community or institutional building or public park.

Mark and reference UTM coordinates (not latitude and longitude) and the corresponding elevation above mean sea level for the operation or plant. UTM coordinates may be acquired from the USGS 7.5" topographical map. UTM coordinates are marked as blue tick marks along the outside edges of the map. These coordinates must be provided for a point inside the plant boundary near the center of the property and be accurate to within fifty meters.

Attachment C - Installation and Start Up Schedule

Provide in detail the anticipated construction or building schedule for alteration, expansion, modification or new emission unit.

Attachment D - Regulatory Discussion

Provide a listing of the applicable state and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit, and sufficient information which will demonstrate compliance with any applicable state and federal air quality regulatory requirements.

Attachment E - Process Description

Provide a detailed written description of the operation, plant and/or affected facilities. The Process Description is used to provide the reviewing engineer a complete understanding of the activity at the operation or plant. Describe in detail and order the complete process.

Use the following guidelines to ensure a complete Process Description:

1. All sources, affected facilities, and air pollution control devices must be included in the Process Description.
2. When modifications are proposed, describe the modifications and the effect the changes will have on affected facilities, equipment or operation.
3. Proper Source Identification Numbers are used consistently in the Process Description.
4. Additional information that may facilitate the reviewer's understanding of the Process Description is included.

Attachment F - Emission Points Data Summary Sheets

Provide the appropriate Emission Points Data Summary Sheet. This shall include 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. See Appendix A.

Attachment G - Description of Fugitive Emissions

When applicable, provide a detailed written description of fugitive emissions associated with the process if there is reason to believe the affected facility is close to major source thresholds.

Attachment H - Supporting Emissions Calculations

Provide detailed emission calculations which lists the plant or operation's potential to emit (PTE) for criteria and hazardous/toxic air pollutants.

Use the following guidelines to ensure complete emission calculations

1. All emission sources are included in the emission calculations, as well as all methods used in the emissions calculations.
2. Proper Source Identification Numbers are used consistently in the Emission Calculations.

Attachment I - Class I Legal Advertisement

Publication of a proper Class I legal advertisement is a requirement of the application process. In the event the applicant's legal advertisement fails to follow the requirements of 45CSR 13 (45-13-16.4) or the requirements of Chapter 59, Article 3, of the West Virginia Code, the application will be considered incomplete. 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.

The applicant, utilizing the format for the Class I legal advertisement appearing below, shall cause such legal advertisement to appear a minimum of one (1) day in the newspaper most commonly read in the area where the affected facility exists or will be constructed. The notice must be published no earlier than five (5) working days of receipt by this office of your application. If this happens, the applicant may be required to republish the notice. The original affidavit of publication must be received by this office no later than the last day of the public comment period.

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.

The location of the source should be as specific as possible starting with: 1.) the street address of the source (If no street address is available, provide location relative to the closest intersection or mile marker); 2.) the nearest street or road; 3.) the nearest town or unincorporated area; 4.) the county, and 5.) latitude and longitude coordinates in decimal format.

If the location description is not sufficiently detailed, the DAQ may require the applicant to republish the Class I legal advertisement.

Types and amounts of pollutants discharged must include all regulated pollutants (PM, PM₁₀, VOC, SO₂, NO_x, formaldehyde, benzene, toluene, ethylbenzene, xylene, and n-hexane) and their potential to emit or the permit level being sought in units of tons per year.

In the event the 30th day is a Saturday, Sunday, or legal holiday, the comment period will be extended until 5:00 p.m. on the following regularly scheduled business day.

An example Class I legal advertisement is included as Appendix B. The public notice shall be in a newspaper having general circulation in the county or counties where the facility is located.

Attachment J – Photograph of Posted Sign

In addition to the Class I legal advertisement, the applicant shall post a visible and accessible sign, at a minimum of two (2) feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that a permission to construct has been applied for and include the West Virginia Division of Air Quality permitting section telephone number (304-926-0475) and website (www.wvdep.org) for additional information. The applicant must post the sign for the duration of the public notice period.

The applicant is responsible for providing proof by submitting a photograph of the posted sign.

Attachment K – Business Confidential Claims

If applicable, please see the **Precautionary Notice – Claim of Confidentiality**, for information entitled to confidential treatment as provided by West Virginia Legislative Rule 45CSR31, entitled “Confidential Information.” See Appendix C.

Attachment L - Certification of Information

Any Permission to Commence Construction Application shall be signed and certified by a Responsible Official or Authorized Representative. Such signature shall constitute an agreement that the applicant will assume responsibility for the construction, modification, relocation, administrative update and/or operation of the stationary source in accordance with 45CSR13 Section 16 including:

1. 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.
2. 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.
3. 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.

If the Permission to Commence Construction Application is not signed, it will be returned to the applicant.

Permission to Commence Construction Application Fee

A person submitting an application to commence construction in advance of permit issuance under 45CSR13 Section 16 shall pay a fee of \$200 for each application to cover a portion of the administrative costs of implementing this section. The application fee shall be paid by a negotiable instrument (check, draft, warrant or money order) to DEP - Division of Air Quality (45CSR13, Section 16.14).

Any submitted Permission to Commence Construction application shall not be deemed to have been received nor administratively complete unless payment of the proper fee is included.

Any application fee paid hereunder is not refundable.

Section 5 – Division of Air Quality Actions

The following is a summary of actions that will occur once a Permission to Commence Construction Application is received:

1. Once received, 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 this 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.
2. 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 the following conditions have been satisfied:
 - a. The applicant is and has been for a period of at least three (3) years in substantial compliance with all other active permits and applicable state and federal air quality regulatory requirements under 45CSR13.
 - 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.
 - c. The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable 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.
 - 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.
 - e. The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted.
 - f. The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.
3. If the Secretary finds that all of the above conditions 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 listed above have 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 45CSR13.
4. Within fifteen (15) days of completion of the required 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.
5. 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 45CSR13, the Secretary may order that construction cease until the Secretary makes a decision on the application for a permit or permit modification.
6. If the Secretary orders that construction cease, then 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 45CSR13 that authorizes construction to resume.

7. 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 45CSR13 Section 16. No evidence regarding any contract entered into, financial investment made, construction undertaken, or economic loss incurred by any person or permittee who proceeds under this 45CSR13 Section 16 without first obtaining a permit under 45CSR13 is admissible in any contested case or judicial proceeding involving any permit or registration required under 45CSR13. No evidence as to any determination or order by the Secretary pursuant to 45CSR13 Section 16 shall be admissible in any contested case or judicial proceeding related to any permit or registration required under 45CSR13.
8. Any permittee who proceeds under 45CSR13 Section 16 shall be precluded from bringing any action, suit or proceeding against the state, the officials, agents and 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 45CSR13 Section 16.
9. 45CSR13 Section 16 does not relieve any person of the obligation to comply with any other requirements of state law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of this 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 45CSR13.
10. 45CSR13 Section 16 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. 45CSR13 Section 16 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. 45CSR13 Section 16 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.

APPENDIX B – Class I Legal Advertisement

EXAMPLE LEGAL ADVERTISEMENT

AIR QUALITY PERMIT NOTICE Notice of Permission to Commence Construction Application

Notice is given that (Applicant's Legal Name) has applied to the West Virginia Department of Environmental Protection, Division of Air Quality, for permission to commence construction of a (Type of Operation). Construction will begin prior to the receipt of an operating air permit from the West Virginia Department of Environmental Protection Division of Air Quality, for an *(alteration or expansion)* of the existing *(nature of operation)* facility located on (Street Name, Road Number, etc.), (in/near City or Town), in (County Name) County, West Virginia. The latitude and longitude coordinates are: (Provide latitude and longitude in decimal format, NAD83 Decimal to 5 digits). The proposed (alteration or expansion) involves (brief description of air contaminant source and any associated air pollution control device).

The current air permit (s) for this facility is (are) Air Permit No(s). (permit no. or nos.), issued to (facility name), (city), West Virginia, on (date of permit issuance).

The applicant estimates the (Increased, if modification application) potential to discharge the following Regulated Air Pollutants will be: (Pollutants and associated amounts in tons per year).

Startup of operation is planned to begin on or about the (Day) day of (Month), (Year). Written comments will be received by the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE, Charleston, WV 25304, for at least 30 calendar days from the date of publication of this notice.

Any questions regarding this Permission to Commence Construction application should be directed to the DAQ at (304) 926-0499, extension 1250, during normal business hours.

Dated this the (Day) day of (Month), (Year).

By: (Applicant's Legal Name)
(Name of Responsible Official)
(Title of Responsible Official)
(Mailing Address)
(City, State and Zip Code)

APPENDIX C – Business Confidential Claims

Precautionary Notice — Claims of Confidentiality

The person submitting this information may assert that some or all of the information submitted is entitled to confidential treatment as provided by West Virginia Legislative Rule 45CSR31, entitled “Confidential Information.” Information covered by such a claim will be disclosed by the Division of Air Quality (DAQ) only to the extent, and by means of the procedures, set forth in 45CSR31. Please contact the West Virginia Secretary of State’s Office at 304/558-6000 to obtain a copy of 45CSR31 in order to ensure that all required procedures are followed.

Information concerning the “types and amounts of air pollutants discharged,” as that term is defined in WVCSR §45-31-2.4, shall not be claimed as confidential.

Any claim of confidentiality shall be made in accordance with the requirements of 45CSR31 and must accompany the information at the time it is submitted to the DAQ. **If no claim of confidentiality is made at the time of submission or is not made in accordance with the requirements of 45CSR31, the DAQ may make the information available to the public without further notice.**

Included below are procedures to be followed in submitting information claimed as confidential. This information is intended to assist a person with claiming confidential information and is not meant to relieve a person of his/her obligation to review the provisions of 45CSR31 and to comply with such rule. The procedures are as follows:

1. Indicate clearly the items of information claimed confidential by marking each page with the term “Claimed Confidential” with the date of such claim of confidentiality. With the exception of documents of a size greater than 8.5" x 14", information claimed confidential must be submitted on colored paper.
2. Include a cover document which justifies the claim of confidentiality in accordance with the specific criteria under WVCSR §45-31-4.1. A sample cover document is attached for your information and use. The cover document will be available for public disclosure and must include the following information:
 - a. The identity of the person making the submission of information claimed confidential.
 - b. The reason for the submission of information.
 - c. The name, an address in the State of West Virginia and telephone number of the designee who shall be contacted in accordance with 45CSR31.
 - d. Identification of each segment of information within each page that is submitted as confidential and the justification for each segment claimed confidential, including the criteria under WVCSR §45-31-4.1.

- e. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specified event or permanently).
 - f. Signature of a responsible official or an authorized representative of such person.
3. At the same time as the information claimed confidential is submitted to the DAQ on colored paper, a complete set of the information, including the cover document previously required under paragraph 2, must be submitted on white paper with the information claimed to be confidential blacked or whited out and the words "Redacted Copy — Claim of Confidentiality" marked clearly on each such page, so that the information is suitable for public disclosure. In the case of drawings and blueprints, mark each page with the words "Redacted Copy — Claim of Confidentiality" include the title or legend of the drawing, and black or white out the information claimed confidential. The redacted page may be 8.5" x 11" in size.
4. In the case of a permit application or supplemental information to an application, DAQ requires an applicant to submit three (3) copies of the application. Of those three (3) copies, one (1) must be a complete set of the application containing the information claimed confidential on colored paper and two (2) must be redacted copies. The DAQ reserves the right, however, to request additional copies of the information containing the confidential material.

Sample Cover Document Confidential Information

This sample form contains each of the required elements for the cover document required under 45CSR31. The person submitting this form may wish to attach an additional page(s) to provide adequate justification under the "Rationale" section of the form.

Company Name		Responsible Official	
Company Address		Confidential Information Designee in State of WV	Name
			Title
			Address
Person/Title Submitting Confidential Information			Phone
			Fax

Reason for Submittal of Confidential Information:

Identification of Confidential Information	Rationale for Confidential Claim	Confidential Treatment Time Period
	Provide justification that the criteria set forth in § 45CSR31-4.1.a - e have been met.	

Responsible Official Signature:	
Responsible Official Title:	
Date Signed:	