TITLE 45
INTERPRETIVE RULE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF AIR QUALITY

SERIES 13A
THE PERMITTING OF RESEARCH AND DEVELOPMENT (R&D) ACTIVITIES UNDER 45CSR13

§45-13A-1. General.

1.1. Scope. -- The purpose of this rule is to provide guidance and clarification regarding the permitting of Research and Development (R&D) activities under 45CSR13 while ensuring compliance with all applicable requirements and at the same time providing operational flexibility.

1.2. Authority.-- W. Va. Code §§22-5-1 et seq. and WV 45CSR13.

1.3. Filing Date. – February 28, 2002.

1.4. Effective Date. – March 30, 2002.

§45-13A-2. Definitions.

2.1. "Research and Development (R&D) Activities" means activities the primary purpose of which is at least one of the following:

2.1.a. To evaluate process changes in connection with pollution prevention efforts (including improved process efficiencies);

2.1.b. To develop data for correction of manufacturing facility operational problems and customer product quality concerns;

2.1.c. To produce products for commercial sale for the purpose of customer evaluation, market development or testing, provided that such activity is not the principal purpose of the facility; or

2.1.d. To conduct "scale-up" from laboratory or bench-scale studies for the purpose of collecting information and data for engineering and design of a commercial facility.

2.2. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 45CSR13 and W. Va. Code § 22-5-2.

§45-13A-3. Applicability.

3.1 Emissions from laboratory facilities associated with R&D activities shall not be considered R&D activities subject to this rule. Such emissions shall be subject to the provisions of 45CSR13B.

§45-13A-4. Activities Exempt from Permitting.

4.1. R&D activities shall be exempt from permitting requirements under 45CSR13, provided the following terms and conditions are met:

4.1.a. The R&D activities do not result in any new or increased actual emissions of regulated pollutants or the applicability of any new requirements; nor do such activities constitute a "major modification" under 45CSR14 or 45CSR19; or

4.1.b. The R&D activities have new or increased actual emissions of regulated

pollutants and meet one of the following criteria:

4.1.b.1. The R&D activities do not increase actual emissions more than 6 pounds per hour or 2 tons per year of a criteria pollutant;

4.1.b.2. The R&D activities do not increase actual emissions more than 2 pounds per hour or 1 ton per year of aggregated hazardous air pollutants (HAPs), including any new or different HAPs; provided that the new or different HAPs do not result in the applicability of any new or revised requirements; or

4.1.b.3. The R&D activities do not increase actual emissions of toxic air pollutants more than the amounts listed in subdivisions 2.17.c and 2.17.d of 45CSR13.

4.2. R&D activities eligible for the permitting exemption under subdivisions 4.1.a or 4.1.b shall maintain records on-site for at least two (2) years which records shall be available to the Director upon request and shall include the following:

4.2.a. Description of the research and development activity;

4.2.b. The operating data to support methods, procedures and/or techniques used to control emissions;

4.2.c. The estimated actual emissions of regulated pollutants and supporting calculations; and

4.2.d. The date and duration of regulated pollutant emissions.

4.3. A source which is 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 Director, with reasonable specificity, information to the contrary.

§45-13A-5. Effect on Other Rules.

5.1. For application of the exemptions for particulate matter and mineral acids provided by section 10 of 45CSR7 and of the exemptions for sulfur dioxide provided by section 4 of 45CSR10, actual emissions from R&D activities will be regarded the same as potential to emit.